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ABSTRACT

These materials are intended to provide suggestions for the development of legislation for programs of delinquency prevention and treatment administered by state and local public agencies. Recommendations for both content and language are offered as aids to planning the improvement, coordination or unification of existing law, or on the drafting of new laws. All suggestions are based on research and study which included: (1) a review of state laws; (2) federal and state judicial decisions; (3) field study in certain selected states; and (4) discussions with many individuals actively engaged in this field. Principles underlying the legislative materials, as well as instructions about how they may best be utilized, are discussed. Throughout the materials, special emphasis is placed on providing services and facilities in the communities in which the children and youth live. (TL)

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Legislative Guide For Drafting State-Local Programs on Juvenile Delinquency

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FOREWORD

These materials are intended to provide suggestions for the development of legislation for programs of delinquency prevention and treatment administered by State and local public agencies.

The preparation of this document was undertaken in response to many requests from State administrative and legislative officials and others concerned about such programs and voicing the pressing need for help in drafting legislative proposals in this area. Portions of these materials are based in part on a document in this area. Portions of these materials are based in part on a document issued by the Children's Bureau of the Department of Health, Education, and Welfare in 1957 entitled "Principles and Suggested Language for Legislation on Public Child Welfare and Youth Services," as well as on legislative, judicial and factual developments in the field of juvenile delinquency since then. It also includes some material from "Legislative Guide for Drafting Family and Juvenile Court Acts" (C.B. Pub. 472–1969), and is designed to mesh with the concepts and provisions set forth in that publication.

These materials were prepared by Herbert Wilton Beaser, who had prepared the initial draft of the 1957 document. Mr. Beaser, a member of the Massachusetts Bar, was formerly Chief Counsel of the Children's Bureau and of the U.S. Senate Subcommittee on Juvenile Delinquency and has participated in the preparation of many of the standards in the field of juvenile delinquency and child welfare. He prepared this document in collaboration with Mr. William H. Sheridan, Assistant to the Commissioner, Youth Development and Delinquency Prevention Administration, Social and Rehabilitation Service, Department of Health, Education, and Welfare.

These suggestions were made as a result of research and study which included review of State laws, Federal and State judicial decisions, field study in certain selected States, and discussions with many individuals actively engaged in this field.

These recommendations for content and language are offered as aids to those who are planning on the improvement, coordination or unification of existing law, or on the drafting of new laws. It is hoped that they will be of assistance especially to State and local agencies, legislative committees, State and community planning agencies, and all others interested in improving legislation in this field. They are made available for such use as any State may wish to make of them–whether in a gradual developmental process which preserves gains already made, or in more extensive or radical reorganization of State law required to achieve specific objectives or to lay the groundwork for more effective programs.

Each State can start where it is in relation to present services. Although achievement of improved, extended or new services comes step by step, the goals for a broad program of services can be seen clearly. While the present is being faced realistically, sights can be set for the future. Achievement of these goals calls for increased cooperation and coordination among all groups concerned with the prevention of juvenile delinquency and the treatment of delinquent children and youth.

The Youth Development and Delinquency Prevention Administration wishes to acknowledge the assistance of the many individuals who contributed to the development of this publication.

ROBERT J. GEMIGNANI
Commissioner
Youth Development and Delinquency
Prevention Administration

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PRINCIPLES UNDERLYING THESE LEGISLATIVE MATERIALS

While the legislative suggestions contained in these materials deal with state and local public programs relating to the prevention and treatment of juvenile delinquency, they can be advanced only against a background and within the framework of certain generally accepted social and legal principles applicable not only to such children and youth but to all children and youth as well.

Those principles are set forth below, with a brief discussion of each.

1. Parents have the primary responsibility for meeting the many needs of their children and youth and, when necessary, society has an obligation to help them meet such responsibility. When parents are unable or unwilling to fulfill these responsibilities, society must assume them either to protect the community or such children and youth, with due regard to preserving the legal rights both of the children and youth and of their parents.

The young - because of their youth and immaturity - need care, nurture, love and attention. They need also protection and the opportunity for the fullest development of their capacities. Parents have the primary responsibility for meeting these needs but obviously they cannot, alone, meet all of them.

Society must, therefore, help parents by furnishing:

* certain resources and services for all children and youth, such as schools, and health services for promoting good health and fostering normal physical and emotional development;
* as required, specialized resources and services for children and youth with particular needs, such as diagnostic and remedial services for the sick and for those with physical, mental and emotional handicaps; and,
* social services, care and financial assistance for those whose parents are unable to meet or carry out their responsibilities.

Society also has a duty to promote conditions that are conducive to the wholesome development of family and child life and that will enable parents to discharge their responsibilities toward their children and youth in a manner which will benefit both their children and youth and their communities.

2. Creation of comprehensive programs of delinquency prevention and treatment is the responsibility of public agencies, acting, whenever possible, in cooperation with voluntary agencies. The services offered through these programs should be universally available and sufficient in quality and quantity to achieve their objectives.

These programs should focus on making available all appropriate services needed by children and youth to:

* divert them from the juvenile justice system if they are in danger of becoming delinquent;
* rehabilitate them if they have already been adjudicated delinquent and ensure their return to and reintegration into their communities.

Meeting the needs of these children and youth requires a variety of skills, services and facilities. A united approach of public and voluntary agencies is essential. As both recognize their interrelationship, join their efforts, and reinforce each other, they can, together, achieve effective coordination of services and assure the use of all available services, resources, and facilities for the benefit of these children and youth.

3. State governments are responsible for planning and carrying out comprehensive, statewide programs providing the necessary services, resources, and facilities for delinquency prevention and treatment or for assuring that such services, resources, and facilities are provided by local government units throughout the State.

The States have responsibility for promoting and protecting the welfare and safety of their people. To this end, the State has authority to plan, establish and carry out necessary services which not only promote the well-being of children and youth and provide safeguards for their protection but also ensure that all persons shall have equal opportunity to exercise their rights and freedoms and fulfill their obligations in safety, with due regard to the rights, freedoms and safety of others.

Responsibility may be delegated to local government units for providing some of the services, resources and facilities for the prevention and treatment of juvenile delinquency in accordance with policies, regulations and standards promulgated by the State government. However carried out, the State government has the ultimate responsibility and obligation for the maintenance of such a program, whether the State government itself provides all of the services, resources and facilities or whether they are provided in part by local government units or through the appropriate utilization of facilities and services of voluntary agencies.

4. It is essential to enlist the participation of representatives of other public programs, voluntary agencies, and citizens groups, including youth groups, in the planning and development of delinquency prevention and treatment programs.

The active and meaningful participation in program planning and development by those who represent citizens groups, including youth groups, other public and voluntary programs, especially at the community level, affords them the opportunity to express the hopes, thinking and interests of those most involved and affected by program operations, for interpreting program objectives to them, for taking into account all available services, resources and facilities, and for arousing and sustaining "grass roots" support for and understanding of what is sought to be attained.

5. Programs for the prevention and treatment of delinquency should be comprehensive, stemming from three types of responsibility:

*** establishing and enforcing adequate standards for services and facilities for children and youth who are delinquent or in danger of becoming delinquent;**

*** making available services, resources and facilities for such children and youth of a variety, quantity and quality necessary to meet their needs most effectively; and,**

*** promoting coordination and cooperation among organizations, agencies and groups in community planning, organization and development of services and facilities.**

The services and facilities stemming from these three types of responsibility should include in their objectives both prevention and treatment. Probably no State program, however administered, at present encompasses all of the services and activities provided for in these legislative suggestions. Separately, if not collectively, however, most of their counterparts will be found in varying degrees in present programs of the various States. They are here set forth as representing the elements of what, today, is regarded as a comprehensive and well-rounded program of delinquency prevention and treatment.

6. Public programs of delinquency prevention and treatment may be entirely State administered or partly locally administered. If the latter type, the local units should be vested with as much responsibility as possible and appropriate, the State government making this possible by providing consultation and adequate financial assistance. In addition, to promote quality, uniformity and efficiency of services, local administration should be governed by State promulgated regulations and standards. Subject to differences that exist between State and local governments with respect to jurisdiction, organization and administration, the principles applicable to the State agency should also be applicable to local agencies. Regardless of how administered, services and facilities for the prevention and treatment of delinquency should, to the greatest extent possible, be community-based close to the youth they serve and to other auxiliary community services.

In a State administered program the law gives responsibility for all duties and functions to a State agency financed by State appropriations. In its administration of the program, the State agency makes provision both for statewide services and facilities and for local services. For the latter, the State agency may establish its own local or district offices, through which it provides these services.

In a partly State and partly locally administered program the law gives certain direct operating duties and functions to the State agency and others to agencies of local government. The law should provide for the State agency to issue policies, regulations and standards binding upon local agencies, in accordance with which the local agencies administer the aspects of the program for which they are responsible. Generally the unit of local government is at least as large as a county. In some instances it may be a large urban area governmentally independent of the county. Or it may be two or more counties, small in area or population, which combine their resources in a single agency. Both State and local funds are appropriated for the support of the program.

States with State and locally administered programs vary as to which services are provided by the State agency and which by the local. It also depends on what is appropriate to the function of each agency. For example, in partly State and partly locally administered programs, setting standards for, and licensing, child placing and child caring agencies and institutions and establishing and maintaining treatment facilities for delinquent children and youth, have been developed as appropriate State functions; while providing casework and group work services to children and youth and community organization of services for them have seemed to be appropriate local functions.

7. With each State rests the responsibility for determining through what form of administrative organization it can best achieve the goals of a strong and efficient program of delinquency prevention and treatment, make possible the most progressive development of that program, and give that program a clear cut identity.

No single pattern for the administration of a program of services and facilities for delinquency prevention and treatment—whether State administered or State and locally administered—is applicable to all States. Many States administer all or most services for children and youth in a department of public welfare or human resources. Some States administer certain types of

institutions for children and youth—such as the emotionally disturbed—through another agency. Some States have established a separate agency to provide State services and care for delinquent children and youth.

Also, when organizing services within a single State agency, a number of variations are possible. For example: a State department of public welfare administering all child welfare services for which the State is directly responsible might have a separate division of services for delinquents, parallel with a division for other children and youth; or, it might have a single division of services to children and youth with two or more branches, one of which concerns itself with delinquents. A State agency dealing only with delinquent children and youth might have several divisions, organized according to types of services provided. Still other patterns are possible.

The decision by a State as to the type of organization it regards as best for the administration of its delinquency prevention and treatment programs involves a consideration of a variety of factors, including:

* the administrative pattern of the State and how these services have previously been organized and administered;

* the resources available and the stage of development of the program;

* most importantly, how the most effective work on behalf of children and youth can be organized and carried out so as to reach all children and youth who are delinquent or who are in danger of becoming delinquent with the best quality and the most services and facilities that can be made available.

However, it is essential that the administration of the delinquency prevention and treatment program not be vested in a State agency having duties and functions inconsistent with or incompatible with the objectives of such a program. Thus, for example, it would obviously be self-defeating to provide for the administration of a program of delinquency prevention and treatment by the Attorney General's Office or by the State Police Department. The primary functions of both of these agencies, as well as the training, knowledge and skills which the staffs of both are expected to possess, are—or should be—so exclusively geared to crime detection and criminal prosecution that any suggestion to superimpose upon either of them the highly specialized functions involved in delinquency prevention and treatment should be so evidently incongruous as to be automatically rejected. Likewise, a conflict of roles also arises when the administration of such a program is placed within the judicial branch of government.

Similarly, it is generally considered advisable to separate the functions of delinquency prevention from those of treatment, since the skills, knowledge, objectives, facilities, services, personnel, methods of operation and community involvement of one differ in many respects from the other. Too close commingling of the administration of both programs by vesting responsibility for day-to-day supervision and decision-making in the same administrative head often results in confusion and conflict in approach, thinking and techniques and serious impairment of the ability to attain the objectives of either program.

8. The imposition, by statute, of duties with respect to the prevention and treatment of delinquency should carry with it the responsibility for providing sufficient funds to discharge those duties.

Each State should consider carefully the quality and extent of the services that the State and local governments are prepared to support and decide which services and facilities will be "required" and which will be "authorized" and how the program will be financed. *These decisions are crucial and are not lightly to be made.*

Nevertheless, they must be arrived at at the time of the enactment of the enabling legislation - not after its enactment. If a State agency is to be required by legislation to perform certain services and to provide certain facilities for an effective program for the prevention and treatment of juvenile delinquency, the legislature must decide that it will dedicate sufficient resources to accomplish that purpose - and it must decide that issue at the time it imposes the duty upon the State agency. Otherwide, there will be bitter disappointment on the part of the public because the program objectives have not been met.

The mere issuance of legislative directives - however well phrased - to a State agency to take all necessary steps to prevent and treat juvenile delinquency becomes a snare and a dillusion without a simultaneous commitment to dedicate to such a program sufficient State services, facilities, and resources to enable the State agency to carry out effectively such a legislative mandate.

Unfortunately, with respect to programs for the prevention and treatment of juvenile delinquency, that has all too often been the record. Time and again, spurred on by a public aroused from its normal apathy toward the problems of juvenile delinquency in the community, legislation has been enacted which promised much but, because of lack of the necessary dedication of sufficient resources to its implementation, delivered little.

In any event, there are great advantages in statutorily imposed duties for the provision of certain services since, in this manner, all persons similarly in need of the services will have an equal opportunity to have them made available.

The decision as to how and at what levels the various parts of the program are to be financed depends, not only upon existing patterns of financing other State functions, but also upon the relative requirements of

other State programs, the financial resources of the State, the stage of program development reached, etc. Involved also is the extent to which the cost of services will be borne directly by the State, by local governments, or by the State through allocations of State funds to local agencies. Consideration should be given to State financial assistance to local government units on a flexible or variable grant basis as a means of raising standards, maintaining the quality and adequacy of care and equalizing opportunity for services throughout the State.

Whatever method of financing the State decides upon, it cannot be too greatly emphasized that the funds provided should be sufficient to discharge adequately and fully the duties and functions required by law to be provided by the agency or agencies administering the program. This is particularly true of services and care for children and youth whose legal custody has been removed from their parents by a court on the ground that they need treatment which the parents cannot give.

9. All public services for the prevention and treatment of delinquency should be coordinated, regardless of the organizational structure through which they are provided.

Whether the services are administered by a single State agency or by more than one agency, there should be coordination and cooperation to keep the focus on program objectives, to provide for continuity of service as the needs of particular children and youth change, without frequent shifts from one agency to another, to give recognition to social needs common to all children and youth, and to avoid duplication or overlapping and to assure maximum use of services, facilities and resources.

When one agency is responsible for all or most of the program, this coordination may be achieved through administrative devices; when several agencies are responsible for the different parts of the program it must be achieved through clearly defined cooperative relationships and coordinating mechanisms.

10. Public services for the prevention and treatment of delinquency should be closely associated with other public services designed to help individuals and families with their economic, personal, family or community problems.

Maintenance of such relationships and cooperation promotes the most effective functioning of each program. These other public programs include many related services, such as family and general child welfare and public assistance - especially aid to families with dependent children. They also include programs providing other services for the well-being of individuals and families such as health services, including mental health, vocational rehabilitation, education, housing, social insurances, training and employment services.

11. Public services for the prevention and treatment of delinquency should be available equally throughout the State to all who require such services.

Services should be made available to children and youth without regard to social, ethnic, racial or religious status or affiliation and without regard to duration of residence in the State or governmental unit.

12. Public services for the prevention and treatment of delinquency should always have regard for the relationship between parents and child and for safeguarding the legal rights of the child and those of his parents.

In providing these services there should be recognition of the parent-child relationship and of the importance of preserving its positive values whenever possible, whether or not the child is living with his parents.

Although a public agency may not provide services and care for a child or youth without the consent of his parent or legal guardian except upon court order or upon a request authorized by law, the agency should make known its services and, when appropriate, afford the parent or guardian an opportunity to avail himself of such services voluntarily.

13. When a legal custodian is appointed for a child or youth, the legal custodian - whether an individual or an agency - should have the statutory authority, consistent with the legal rights of the child or youth and of his parents, and with the authority of the court, necessary to determine and carry out the treatment that will best meet the needs of such child or youth.

Successful treatment necessitates that the legal custodian of a child or youth have authority to make a variety of major and minor treatment decisions. However, such decisions cannot be made if they are contrary to the legal rights of the child or youth or of his parent, or abrogate, remove, change or in any way limit the legal status of the child or youth with respect to his parent or legal guardian without resorting to legal process. If the legal custodian finds that the child or youth does not have a natural or adoptive parent in a position to exercise effective guardianship, or a legal guardian, the legal custodian should petition the appropriate court for the appointment of an individual as a guardian of the person of such child or youth. The authority given the legal custodian by law with respect to a child or youth should be designed, therefore, to avoid either disregarding the rights of the child or youth or of his parents or so circumscribing the actions of the legal custodian

that any necessary treatment program will be seriously disrupted.

The legal custodian of a child or youth should make periodic reexamination and reevaluation in the case of each child or youth, for neither the legal right of a parent to the legal custody of a child or youth nor the right of the child or youth to live in his own home should be taken away for longer than is necessary. Major treatment decisions should be subject to court review upon the petition of the child or youth or of his parents or legal guardian; other decisions designed to implement a major treatment decision, but involving no treatment inconsistent with it, should not be subject to such review. In all such appeals to the court, the child or youth should be entitled to legal counsel.

14. Parents and others legally responsible for children and youth should be required, insofar as they are able, to discharge their legal and financial obligations for them.

It is in the best interests of both the individuals and the community that parents and others legally responsible for children and youth should be required, insofar as they are able, to discharge their legal and financial obligations towards them.

15. Research is essential to the development of a forward moving program of services for the prevention and treatment of delinquency as is the periodic reexamination of the program's progress toward achieving the objectives of such program.

Research, well planned and conducted, has a significant role in the development of public, as well as voluntary, services for the prevention and treatment of delinquency. Through it the social needs of children and youth and of communities can be identified and factual bases established and methodology defined for constructive State and local planning and action. The extent to which public, as well as voluntary, agencies provide opportunities to qualified staff to undertake original research and studies in this field and the related social and biological sciences and to report their findings will be an important factor in determining future progress in improving practices and in developing new ways of meeting the needs of children and youth who are delinquent or who are in danger of becoming delinquent.

16. Personnel for providing delinquency prevention and treatment services should be qualified by personality, training and experience, be selected on a merit basis, and have the conditions of their employment safeguarded. The agency or agencies responsible for the program should make provision for staff training and development.

The quality of the services that are ultimately effective in the prevention and treatment of delinquency depends upon the individuals who carry out the program. The comprehensive nature of the services requires staff with many kinds of specialization, including child welfare workers and specialists in other fields such as psychiatry, psychology, education, sociology, and public information and interpretation. All of these should have appropriate professional preparation. The great shortage of qualified personnel in these fields, as well as the need for all staff continually to improve and add to their knowledge and skill and to develop their potentialities, makes it imperative that an agency administering the services carry on a program for the careful selection of staff and for their professional development, including full academic education and in-service training. Such a program assures staff opportunities for continuing acquisition of new technical knowledge and for increasing their ability to use and develop new methods of work and new skills. The same is true with respect to paraprofessionals, volunteers, and indigenous workers.

HOW TO USE THESE MATERIALS

In the materials which follow, an attempt has been made to set forth in legislative language certain basic principles for the administration of a program of services for the prevention and treatment of juvenile delinquency. The materials are designed to reflect many concepts which, to date, have found acceptance as desirable for inclusion in State legislation, including those contained in the "Legislative Guide for Drafting Family and Juvenile Court Acts," prepared by William H. Sheridan and issued in 1969 by the Department of Health, Educatio. and Welfare (Children's Bureau Publication 472-1969).

In addition, they incorporate into suggested legislative language some recent concepts which have evolved either as a result of judicial decisions or of changed conditions. Special attention has been paid to suggestions as to ways in which children and youth can be diverted from the juvenile justice system with due regard to the safety of the community.

It will also be noted that special emphasis is placed throughout these materials, in line with the best current thinking, on providing services and facilities needed for prevention and treatment in the communities in which the children and youth live.

Each State using these materials must determine for itself how best to use these suggestions in order to meet its own requirements.

Also each State will need to adapt the language of the suggested statutory provisions to its own State constitution and the relevant legislation already enacted. In some instances, a State may have to go further than these materials do and consider other changes in its basic laws in order to achieve the objectives sought.

No law relating to the prevention and treatment of juvenile delinquency stands alone. The principles and standards essential for the full protection of children and youth are the foundation of a whole network of statutory and administrative provisions benefitting children and youth.

Some of these principles have already been set out.

Closely related to the law establishing and setting forth the duties of the agency or agencies which administer the programs covered by these materials are other statutes which require or authorize the agency or agencies to perform certain duties and functions in the total field of child welfare services. Among such laws, in addition to those relating to the courts and the police, are those dealing with the regulation of child placing activities, the licensing of foster homes and child caring and placing agencies for children and youth, guardianship, adoption, termination of parental rights and responsibilities, etc.

While it is recognized that there is great need for legislative drafting suggestions for a comprehensive "Children and Youth Code" which would provide legal guidance by way of suggested legislative language with respect to all aspects of law as it affects children and youth, it should be recognized that these materials do not seek to attain that objective and are strictly limited in scope to administrative provisions for the prevention and treatment of juvenile delinquency.

Also, because of differing agency structures through which the functions and duties described in these materials may be organized and administered, suggested language is not included, except in limited areas needed to illustrate basic organizational principles, for the actual establishment and the overall organization and functions of the agency administering the program.

Further, these materials do not generally attempt to include drafting suggestions with respect to the relative roles of the State and local units in the financing of locally administered programs, although they do contain an analysis of probation subsidies and suggested legislative language with respect to regional detention facilities.

Certain additional provisions will be required, if not already enacted, e.g. power to do certain things with respect to real property, appropriations, etc.

Caution: These materials are not intended to be copied as a totality, without modification, to form a comprehensive package for enactment as is in order to provide for a complete program for the prevention and treatment of juvenile delinquency. They must be adapted to the legislative needs of each State.

Caution: Many of the sections of the suggested legislative language in these materials are interrelated. A change in the wording of one section may require a change in another. Although some sections or subsections might lend themselves to use out of context, others, if not used with the inclusion of certain interrelated sections, might lead to serious confusion or conflict.

BASIC ORGANIZATION OF THESE MATERIALS

Title A deals with a program wholly administered by the State.

Title B deals with a program which is part State and part locally administered. Many of the provisions of Title A will be applicable to Title B, with little or no change. Others will need change. Both situations are indicated in the text.

NOTE:

There are currently considerable discussions throughout the country as to whether the jurisdiction of the juvenile court should be retained with respect to truants, runaways, curfew violators, or children who are beyond parental control. Such suggestions need considerably more study.

TITLE A - A STATE ADMINISTERED PROGRAM

Sec. 1. PURPOSE.

It is the purpose of this (Act) to intensify and coordinate efforts by State and local public agencies, in cooperation with voluntary agencies and organizations, citizens groups, and concerned individuals, to:

(a) preserve the unity of the family whenever and to the extent possible;

(b) take such actions as may be necessary and feasible to prevent children and youth from becoming delinquent;

(c) prevent, consistently with the protection of the public interest and safety, children and youth from suffering the consequences of criminal behavior by substituting therefor programs for their supervision, care and rehabilitation;

(d) support the evolution and implementation of innovative, realistic methods of diverting children and youth from the juvenile justice system; and,

(e) provide adequate financial assistance for imaginatively, knowledgeably, and practicably conceived and provided services and facilities for the rehabilitation of delinquent children and youth so that they may become and remain law-abiding, productive citizens.

Comments on Section 1: *A purpose clause gives a bird's eye view of the general objectives of the proposed legislation. After enactment, it can be of assistance in the interpretation of the various sections. However, reliance for authority to perform certain acts should not be placed on a "purpose" clause. There is no substitute for precise legislative drafting which clearly authorizes the performance of certain acts.*

The word (Act) is placed in parentheses throughout since the suggested language may be part of a complete Act or part of amendments to existing legislation.

Sec. 2. DEFINITIONS.

As used in this (Act):

(a) "Child" means an individual who is so defined in the "Family and Juvenile Court Act."

(b) "Commit" means to transfer legal custody.

(c) "Court" means the (court having jurisdiction over children who are alleged to be or who are found to be delinquent or neglected or in need of supervision under the "Family and Juvenile Court Act") unless the context specifically indicates to the contrary.

(d) "Custodian" means a person, other than a parent or legal guardian, to whom legal custody has been given by a court order or who is acting in loco parentis.

(e) "Delinquent act" means an act designated as such under the "Family and Juvenile Court Act."

(f) "Delinquent child" means a child who is found to have committed a delinquent act and is in need of care and rehabilitation.

(g) "Department" means the (State Department of _____).

(h) "Detention care" means the temporary care of children in secure custody pending court disposition.

(i) "Detention facility" means a facility in which children are provided detention care.

(j) "Family and Juvenile Court Act" means (insert reference to statutes governing jurisdiction and authority of court over children alleged or found to be delinquent or in need of supervision.)

(k) "Foster family home" means _____. (See comments.)

(l) "Group care facility" means _____. (See comments.)

(m) "Guardian of the person" of a minor means an individual or agency appointed to act as such in accordance with the provisions of the "Family and Juvenile Court Act."

(n) "Legal custody" has the same meaning as that assigned to this term under the "Family and Juvenile Court Act."

(o) "Maintenance" means board, shelter, clothing, medical, dental, and hospital care, transportation and other necessary or incidental expenses for care, or any of them, or money payments therefor.

(p) "Minor" means an individual who is under the age of 21 years.

(q) "Person in need of supervision" has the same meaning as that assigned to this term under the "Family and Juvenile Court Act."

(r) "Probation" has the same meaning as that assigned to this term under the "Family and Juvenile Court Act."

(s) "Aftercare supervision" means a legal status created by a court order revesting legal custody of a child or minor in his parent and permitting him to remain in his home subject to supervision and return to the court at any time during the period of supervision for violation of the terms of such supervision in situations where, previously, following an adjudication of delinquency or in need of supervision, his parent has been deprived of his legal custody and he had been removed from and subsequently returned to his home.

(t) "Residential child caring facility" means a dwelling other than a detention or shelter care facility, providing living accommodations, care, treatment, and maintenance for children and youth, including foster family homes, group homes, half-way houses, forestry camps, and licensed to provide such care by the (insert name of licensing agency).

(u) "Residual parental rights and responsibilities" has the same meaning as that assigned to this term under the "Family and Juvenile Court Act."

(v) The singular includes the plural, the plural the singular, the masculine the feminine, when consistent with the intent of this (Act).

(w) "State (Title of Executive Head of Department)" means the _____ .

Comments on Section 2: *These definitions follow either by repetition or by reference the definitions set forth in the "Legislative Guide for Drafting Family and Juvenile Court Acts" or the "Standards for Juvenile and Family Courts" which was prepared by William H. Sheridan in cooperation with the National Council on Crime and Delinquency and the National Council of Juvenile Court Judges and issued as Children's Bureau Publication No. 437-1966.*

Subsection (1): *This definition should be completed in accordance with the definition of comparable terms ("foster home", "family home", "boarding home", etc.) in the related State laws, such as those dealing with the licensing of organizations and individuals caring for children. These vary from State to State but, in general, licensing laws define a "foster family home" as a private home which cares for a specified maximum number of children (generally not more than four or six), under a certain age, who are not related to the foster parent by blood, marriage or adoption. Some laws limit the homes so defined to those receiving compensation for the care provided.*

Subsection (m): *What is here intended is a group home operating as an entity in a community to furnish living arrangements for a group larger than is accommodated in a foster home but smaller - usually 7 to 12 individuals - than an institution providing care and treatment for large numbers of individuals. Consideration should be given to definitions of different types of group care facilities in related State laws.*

Sec. 3. GENERAL DUTIES OF (DEPARTMENT) - PROGRAM DEVELOPMENT WITH RESPECT TO DELINQUENCY PREVENTION AND TREATMENT.

With respect to programs for the prevention of juvenile delinquency and for the provision of care and treatment of delinquent children and children in need of supervision, the (Department) shall, in addition to any other duties and functions vested in it by this (or any other) Act:

(a) Collect and evaluate, and assist local communities to collect and evaluate, statistics, information, and data relating to:

(1) The nature, extent, and causes of, and conditions contributing to, the delinquency of children;

(2) The existence and effectiveness of all such programs and the need for strengthening them or initiating new programs for such purposes;

(b) Adopt and implement the most effective means of making available to the public and to appropriate public and voluntary agencies and organizations throughout the State the information thus collected and evaluated;

(c) Encourage and assist in the development and conduct of innovative programs for the diversion of children from the juvenile justice system, to the extent that such diversion can be safely accomplished with due regard to the safety of the community and the well-being of the children involved, and for the provision to them of the care and services they need outside such system, to prevent children from becoming a part of or returning to such system;

(d) Exercise leadership on behalf of the State in the development of written instructional, informational, and standard-setting materials relating to such programs and provide consultative services to other State agencies and to other public and voluntary agencies and organizations with respect thereto;

(e) Enlist the participation of citizens organizations, individual citizens, and representatives of State and local private and public agencies in the planning and development equally throughout the State of efficient, effective programs;

(f) Cooperate with and assist, within the scope of its functions and duties as provided by law, other public and voluntary agencies and organizations in the development and coordination of such programs;

(g) Promote and assist, to the maximum extent possible, in the development, expansion and operation of such programs as are community based.

Comments on Section 3: *This section, while more specific than Section 2, is still phrased broadly so as to sketch in the outlines of the overall powers and duties of the (Department), with the specifics to be filled in by later Sections.*

Sec. 4. DUTIES OF (DEPARTMENT) WITH RESPECT TO SYSTEMS MODIFICATIONS.

(a) The (Department) shall provide leadership to, cooperation with, and, to the extent authorized by this (or any other) (Act), assistance for other State and local public agencies and private voluntary agencies and organizations in bringing about such changes in current systems of providing services to children as are needed to eliminate or modify those aspects of such systems as contribute, or may contribute, to the delinquency of children.

(b) All State agencies shall, to the extent authorized by law, cooperate with the (Department) in bringing about the systems changes provided for in subsection (a) of this Section.

Comments on Section 4: *This section is an attempt to place in the (Department) a definite statutory responsibility to take affirmative action to bring about changes in the manner in which other agencies provide*

services. It does not, of course, attempt to place the (Department) in a position of supervisory authority with respect to any other agency of the State or locality. On the other hand, if the (Department) is to fulfill the role envisioned as the focal point for the prevention of juvenile delinquency, then it should be required to assume and exercise leadership in the modification of those methods of providing services to children which cause such delinquency.

If the (Department) becomes - as these suggestions intend that it should - the assimilator, collector and evaluator of knowledge as to the causes of juvenile delinquency, then it surely will become the one agency in the State possessing sufficient knowledge to espouse and work for the modification of those aspects of the provision of services to children which contribute to their delinquency.

As a corollary to the duty thus imposed on the (Department) to exercise leadership in this area, a corresponding duty of cooperation is placed on other State agencies to bring about the systems changes indicated.

Sec. 5. DUTIES OF (DEPARTMENT) WITH RESPECT TO RESEARCH.

The (Department) is authorized to make provision for the conduct of research, including studies and demonstration projects, into all aspects of the problems relating to the causes, prevention, and treatment of juvenile delinquency either directly or by entering into contracts with or making grants to State or local public agencies, or private agencies, organizations, corporations, or individuals for paying the whole or part of the costs of carrying out such research, including the evaluation of any demonstration projects undertaken.

Comments on Section 5: *When services for the prevention and treatment of juvenile delinquency are part of the functions of an existing State Department carrying out other functions and duties, the language suggested in this section should be related to, or be a part of, comparable provisions for the Department as a whole.*

Sec. 6. DUTIES OF (DEPARTMENT) WITH RESPECT TO PERSONNEL TRAINING PROGRAMS.

(a) The (Department), pursuant to regulations promulgated by it, shall establish comprehensive training programs for persons employed by it or to be employed by it in carrying out the provisions of this (Act) and for persons employed or to be employed by agencies and organizations, both public and private, engaged in activities relating to the prevention of delinquency and the provision of care and treatment to delinquent children.

(b) As part of such programs, the (Department) may develop and conduct, or assist in developing and conducting, relevant courses of study in schools, colleges, and universities, short term training institutes, and in-service training courses and may establish pertinent traineeships.

(c) The (Department) may carry out such programs directly or through grants or contracts to cover the whole or part of the costs of program projects, including the costs of stipends and tuition, allowances for travel and subsistence expenses and, with respect to employees of the (Department) granted leave to undertake approved training, continuation of the salaries and other benefits of such employees.

Sec. 7. COOPERATION BY OTHER STATE DEPARTMENTS AND AGENCIES.

To effectuate the purposes of this (Act), to achieve the most effective use and coordination of State programs relating to or affecting the prevention and treatment of juvenile delinquency, and to assure the maximum use of existing facilities, services and personnel, it shall be duty of all departments and agencies of the State Government and of all officers and employees of the State, when and to the extent requested by the (Department), to cooperate with it in all its activities consistent with their proper functions.

Comments on Section 7: *While requiring all other departments, agencies, officers, and employees of the State to assist the (Department) upon request, this section also recognizes the limits under which they may legally act. The suggested language would not be open to the construction that they are being called upon to do something which other statutes prohibit them from doing or which is inconsistent with their functions.*

On the other hand, a section such as this is important as an additional tool in achieving the overall objective of the (Act) or avoiding or minimizing the all too frequent uncoordinated dissipation of State efforts in this field.

Sec. 8. DUTIES OF (DEPARTMENT) WITH RESPECT TO FUNCTIONS OF THE (STATE LAW ENFORCEMENT PLANNING AGENCY).

The (Title of Executive Head of Department) shall:

(a) be a member of the (State Law Enforcement Planning Agency), hereinafter in this Section called the "Agency";

(b) participate in the development and revision of those phases of the State's comprehensive plan for law enforcement which relate to the prevention of juvenile delinquency and the provision of care and treatment to delinquent children and children in need of supervision;

(c) advise the Agency as to whether specific projects, and amendments thereto, submitted to such Agency for funding under such plan would be consistent with and assist materially in achieving the objectives of such plan.

Comments on Section 8: *Under the Federal "Omnibus Crime Control and Safe Streets Act of 1968" (P.L. 90-351, as amended), Federal grants are made to a State to be utilized by it "to establish and maintain a State planning agency . . . created or designated by the chief executive of the State . . . representative of law enforcement agencies of the State and of the units of general local government within the State." The State Planning Agency is required to develop a "comprehensive statewide plan for the improvement in law enforcement" and "define, develop, and correlate programs and projects for the State and the units of general local government in the State or combinations of States or units for improvement of law enforcement."*

Every State has now established such a State Planning Agency, denominated in various ways. For purposes of this Section such agency has been called the "State Law Enforcement Planning Agency."

Because of the crucial role contemplated for the (Department) under these suggestions in the prevention of delinquency and in the provision of care and treatment to juvenile delinquents and children in need of supervision, the essentiality of the (Department's) being a member of the State Planning Agency seems obvious.

Equally essential should be the need for the full and active participation of a (Department) carrying out comprehensive functions such as those contemplated under these suggestions not only in the development of those phases of the State's plan dealing with the prevention and treatment of juvenile delinquency but also in the review of projects in such field submitted to the State Planning Agency for funding. Again, instances have been found in which such a (Department) in some States has not been consulted with respect to the funding of important, far-reaching projects dealing with vital functions of the (Department) in this field. The inevitable results are confusion and overlapping of activities, the dissipation of already inadequate professional resources, and the waste of Federal, State and local funds.

It is to avoid these undesirable results that the provisions in this Section have been suggested.

The proposal has been advanced that the (Department) be given an absolute veto not only over those sections of the comprehensive State plan relating to the prevention and treatment of juvenile delinquency but that it also exercise such a veto over the funding of proposed projects in that field.

As drafted, the language of this section does not vest in the (Department) such a veto. However, it does require that the (Department) be consulted with respect to matters falling within its functions and duties.

Sec. 9. REPORTS BY THE (DEPARTMENT).

The (Department) shall:

(a) make a full and complete report annually to the Governor with respect to its activities under this (Act) and containing recommendations as to the necessary fiscal, administrative, or legislative measures called for to meet still unmet needs for the prevention of juvenile delinquency and for the care and treatment of delinquent children;

(b) transmit a copy of such report to the Legislature;

(c) take such action as may be necessary and desirable to bring the contents of such report to the attention of the people of the State; and,

(d) make such additional reports and recommendations to the Governor as he may from time to time request or as the (Department) may deem warranted.

Sec. 10. REFERRALS FROM FEDERAL GOVERNMENT.

The (Department) is authorized to serve as an agent of the State in entering into agreements with the appropriate agency of the Federal Government to provide care and treatment for a child found by a Federal Court to be delinquent and committed to the custody of the Attorney General of the United States pursuant to the provisions of 18 U.S.C. 5031-5037, incl., as amended.

Such agreement shall be upon such terms and conditions and shall provide for such compensation as may be mutually agreed upon between the (Department) and the appropriate agency of the Federal Government.

Funds received as compensation under such agreement shall be placed in the State Treasury and are hereby appropriated for the use of the (Department) for carrying out the purposes of this (Act).

Comments on Section 10: *The (Department) should have sufficient authority with respect to intake to accept, at its discretion, the placement with it of a child found to be delinquent by a Federal Court. The types of children to be accepted, the terms of such placements, the amounts of reimbursement for the care and treatment provided, and other such details should not be specified in the act, but should be worked out in agreement between the two governments.*

Specific provision for appropriating for the (Department's) use any funds received in payment for care and treatment obviates the necessity of repeatedly including similar language in annual or biennial appropriation acts.

Sec. 11. RECEIPT OF FEDERAL FUNDS.

The (Department) is authorized to enter into arrangements with the Federal Government for the receipt of Federal funds to carry out the purposes of this (Act) and, for the achievement of that objective, may enter into contracts and agreements with and submit such plans and reports to the Federal Government as may be required and which are not contrary to the provisions of this or any other (Act).

Comments on Section 11: *This section is broadly worded so as to permit the receipt of Federal funds not only under programs in existence at the time of its enactment but also under programs subsequently coming into being.*

In recent years, some States have imposed restrictions on the use and receipt of Federal funds, providing some method of intra-state clearance before an application can be made for Federal funds. In such States, therefore, this suggested language would require modification to take into account such State procedures.

Sec. 12. ESTABLISHMENT OF (OFFICE OF DELINQUENCY PREVENTION AND SERVICES).

There is hereby established in the (Department) an (Office of Delinquency Prevention and Services) which shall be under the supervisory control of a (Title) who shall be appointed by the (Title of Executive Head of (Department)) in the same manner and who shall receive the same compensation as the (Titles) of other (Offices) of the said (Department). The (Office of Delinquency Prevention and Services) shall consist of at least a (Division of Delinquency Prevention) and a (Division of Delinquency Services) and such other Divisions and organizational units as may from time to time be established. All employees of the (Office of Delinquency Prevention and Services) shall be selected, appointed, promoted, and compensated in accordance with the provisions of the (State Merit System). The (Office of Delinquency Prevention and Services) shall be responsible for carrying out all of the functions, duties and responsibilities vested in the (Department) by this (Act).

Comments on Section 12: *The suggestions contained in this section and in Sections 13 and 14 are illustrative of the recommendations contained in the principles set forth at the outset of these materials with respect to the separation of the functions of delinquency prevention from those of treatment.*

No attempt has been made in these three sections to set forth, by reference to specific sections, the exact functions to be performed by each of the Divisions established. It is anticipated that such a separation of functions would be accomplished by administrative orders and directives.

Sec. 13. ESTABLISHMENT OF (DIVISION OF DELINQUENCY PREVENTION).

There is hereby established in the (Office of Delinquency Prevention and Services) a (Division of Delinquency Prevention) which shall be under the direction of a (Director of Delinquency Prevention) and which shall be responsible for carrying out all the functions, duties, and responsibilities vested in the (Department) by this (Act) with respect to the prevention of delinquency.

Sec. 14. ESTABLISHMENT OF (DIVISION OF DELINQUENCY SERVICES).

There is hereby established in the (Office of Delinquency Prevention and Services) a (Division of Delinquency Services) which shall be under the direction of a (Director of Delinquency Services) and which shall be responsible for carrying out all the functions, duties, and responsibilities vested in the (Department) with respect to the provision of care and treatment for children and youth who are alleged to be or who are found to be delinquent or in need of supervision.

Sec. 15. PROBATION SERVICE - DIRECTOR OF PROBATION - PROBATION OFFICERS - INTAKE BRANCH.

(a) There is hereby established in the (Division of Delinquency Services), under the direction and control of the (Director of Delinquency Services), an organizational unit to be known as the (Probation Service) which shall be in charge of a (Director of Probation) and which shall consist of Probation Officers, other social service personnel, and such other employees as may be necessary to carry out the functions, duties and responsibilities vested in such (Department) with respect to the provision of probation and other clinical services for children referred to and under the jurisdiction of the court in accordance with the provisions of this (Act) and the (Family and Juvenile Court Act) and whose legal custody is not vested in the (Department).

(b) There is hereby established within the (Probation Service) an (Intake Branch) for the performance of those functions specified in this (Act) to be performed by such (Branch) and such other functions and duties as may from time to time be delegated to such (Branch).

Comments on Section 15: *All the titles of personnel and the names of the organizational units used in this section are suggestive only, since these are traditionally matters which differ from State to State according to usage.*

The term "Director of Probation" is used in this section because it is one which, like the title "Chief Probation Officer", has been often employed, although in more recent years the word "Director of Administration" is often used.

Because in the suggested statutory language, certain police functions and powers are specifically vested in "Probation Officers", such personnel are singled out by name. They would then exercise those statutory powers by virtue of their appointment as "Probation Officers" and without further delegation to them of such powers by the (Department), as would be the case with respect to other employees.

Sec. 16. INTAKE BRANCH OF PROBATION SERVICE - FUNCTIONS, POWERS, AND DUTIES.

The Intake Branch of the Probation Service shall, in accordance with the provisions of this (Act) and of the (**Family and Juvenile Court Act**), exercise the following functions, powers, and duties:

(a) authorize or provide detention or shelter care for any child lawfully taken into custody and brought to the Intake Branch whom it finds, in accordance with the provisions of Section 24 of this (Act), requires such care;

(b) initially receive all complaints referred to the court alleging that a child is delinquent, or in need of supervision;

(c) Upon the receipt of such complaint, conduct a preliminary inquiry to determine whether the best interests of such child or of the public require that a petition should be filed in accordance with the provisions of the (**Family and Juvenile Court Act**), **Provided, That** such preliminary inquiry shall not extend for a period beyond thirty (30) days from the date on which such complaint is made, **Provided Further, That** during such period, it may conduct conferences for the purpose of effecting adjustments which would obviate the necessity for filing a petition;

(d) If, on the basis of such preliminary inquiry, it determines that a petition should be filed, so recommend to the (**Note #1**), **Provided, That** if the (**Note #1**) determines that a petition should not be filed and the child is in detention or shelter care, such child shall be released therefrom immediately;

(e) If, on the basis of such preliminary inquiry, it determines that a petition should not be filed, notify the complainant of its decision and that the complainant has the right to have such decision reviewed by the (**Note #1**), and may:

(1) refer the case to the appropriate public or private agency and shall, thereupon, close its file with respect to such case; or,

Comments on Section 16: *Note #1: Insert title of appropriate prosecuting official. These suggestions should be carefully coordinated with existing laws relating to the provision of probation services to juveniles and appropriate changes made in those laws.*

It should be noted that the authority to **recommend** *the filing of a complaint is vested in the Intake Branch, with the* **decision** *as to the filing of the complaint being vested in the appropriate prosecuting official.*

The provisions relating to referral contained in Subsection (e) are designed to divert, where possible, juveniles from the juvenile justice system.

Sec. 17. GENERAL DUTIES OF PROBATION OFFICERS - SUPERVISION.

Probation Officers shall perform such duties and functions as may be assigned to them pursuant to the provisions of this (Act) or of the (**Family and Juvenile Court Act**), including the provision of supervision and assistance to children placed by order of the court on probation or otherwise under the supervision of the Division of Probation.

Sec. 18. LIMITATIONS ON POLICE POWERS OF PROBATION OFFICERS.

A duly appointed and qualified Probation Officer shall not be authorized to exercise any duties or functions of a police officer other than those specifically set forth in this (Act).

Comments on Section 18: *A Probation Officer is neither a police officer nor a prosecuting official. His police powers should be specifically spelled out, as here, in the statutory language defining the powers and duties of a Probation Officer. In these materials Section 21 spells out the police powers of the Probation Officer in terms intended to circumscribe clearly those powers. Although the person in charge of the Intake Branch is given responsibility for determining whether a child shall be placed in a detention or shelter care facility, the actual arrest of the child - an exercise of police powers - took place prior to the child being brought to the Intake Branch.*

Sec. 19. PREDISPOSITION STUDY OF CHILD.

When a petition has been filed with the court alleging a child to be delinquent or in need of supervision and (a) the child has been so adjudicated by the court, or (b) there has been filed with the court a written statement by the child or by such child's attorney expressing an intent to admit the allegations contained in such petition and consenting to the making of a predisposition study, the (Department) shall make a

complete study of such child, his family, his environment, and all other matters relating to the need of such child for care and treatment, and transmit a written report of such study to the court, together with specific recommendations as to the type of care and treatment needed by such child, **Provided, That,** where so ordered by the court pursuant to the provisions of the (**Family and Juvenile Court Act**), the (Department) shall cause such child to be examined by a physician, psychiatrist, or psychologist either on an outpatient basis or, if the court finds that such examination should be conducted in a hospital or other appropriate facility, accept the legal custody of such child for such purpose for a period not to exceed (**Note #1**) days, and cause a written report of such examination to be promptly transmitted to the court.

Comments on Section 19: *Note #1: Some specific statutory time limit is highly desirable to avoid a child becoming "lost" during diagnosis. The determination of the court in such cases is only that it is necessary to vest legal custody in the (Department) for the limited purpose of diagnosis and not for all purposes. It is, of course, to be noted that a statutory maximum tends to become the norm and consideration should, perhaps, be given to making the maximum in this section sixty days, with a limited permissable period of renewal by order of the court.*

Sec. 20. TRANSMITTING COPIES OF PREDISPOSITION STUDY REPORTS AND RECOMMENDATIONS

The (Department) shall also transmit, in writing, copies of the records and recommendations required to be made by Section 19 of this (Act) to the child, if appropriate, and his attorney of record and the parent, guardian, or other legal custodian of such child or their attorney simultaneously with the transmission of such reports and recommendations to the court.

Comments on Section 20: *See comments on section 19. It seems obvious that if there is to be full and knowledgeable participation by all parties in the disposition hearing they should be informed of the contents of the predisposition report and recommendations at as early a date as possible.*

Observations of some current court practices indicate an unfortunate lack of participation at disposition hearings by persons other than the probation staff. To some extent this lack of participation seems attributable to lack of preparation and lack of foreknowledge of the contents of the predisposition report and recommendations. And yet, the disposition hearing is as important - or more important - than the adjudication hearing. To circumscribe the latter with all manner of legal safeguards without requiring due notice in the former would seem to vitiate the entire process.

It should be noted that the report is to be sent to the child and *his attorney. It was obvious in some hearings involving older children that the child was quite unaware of the contents of the predisposition report and that his attorney had not consulted him about its contents or sought his views as to the practicability of the recommendations made in such report. A plan of care and treatment recommended for a child would have a much greater chance of success if there were participation by the child in the evolution of such a plan than if it were "imposed from on high".*

Sec. 21. ACTIONS WITH RESPECT TO CHILDREN VIOLATING TERMS OF PROBATION.

Whenever a Probation Officer, who has been assigned supervisory responsibility by the (Department) with respect to a child who has been placed on probation has reasonable cause to believe that such child is in substantial violation of the terms and conditions of his probation, as prescribed by the court, such Probation Officer:

(a) may submit to the Intake Branch a complaint alleging the violations by such child of the terms and conditions of his probation and is authorized to sign a Petition to Revoke Probation, in accordance with the provisions of the (**Family and Juvenile Court Act**);

(b) if he has reason to believe that the immediate detention of such child is required pursuant to Section 24 of this (Act) or that such child may flee the jurisdiction of the court, take such child into custody and deliver such child to the Intake Branch forthwith for a determination as to whether such child should be detained and proceed as provided in subsection (a) of this Section, **Provided, That,** when called upon by such Probation Officer, all peace officers shall assist in taking such child into custody; **Provided Further, That** the Probation Officer shall, at the time of taking such child into custody, advise such child as to the specific terms and conditions of his probation which he is alleged to have violated and of his legal rights.

Comments on Section 21: *A distinction is here made with respect to those situations in which speedy action is required in taking the child on probation into custody in order to protect him or the community and those situations where immediate action is* not *necessary.*

In both cases the suggested language requires that there be a substantial violation by the child of the terms and conditions specified by the court and grants the child the right to appeal to the court.

Throughout this section, the attempt has been made to balance necessities - the need for the meaningful enforcement of the terms and conditions of probation

specified by the court against the need for the child to be protected against arbitrary, capricious or petty enforcement of such terms and conditions, which can become so onerous as to make the attainment of the objectives of probation difficult.

Where there is no emergency (subsection (a)), but it is determined that the terms and conditions of probation are not being substantially observed and further action by the court may be needed, action should be taken in normal course through the Intake Branch.

On the other hand, where there is need for immediate action on the part of the Probation Officer, this section authorizes, with safeguards, the immediate detention of the child.

Sec. 22. TERMINATION OF (DEPARTMENT'S) RIGHT TO SUPERVISE CHILD ON PROBATION OR AFTER-CARE SUPERVISION.

(a) The authority of the (Department) to supervise the conduct of a child who has been placed on probation or on after-care supervision, unless such authority shall be sooner terminated pursuant to the provisions of this (Act) or of the (**Family and Juvenile Court Act**), shall cease:

(1) when such child reaches the age of twenty-one years;

(2) at the expiration of twelve (12) months from the date on which the order of probation or after-care supervision was issued unless the (Department) has, prior to such expiration date, sought and obtained from the court an extension of such order, pursuant to the provisions of the (**Family and Juvenile Court Act**);

(3) at the expiration of any extension date obtained pursuant to Paragraph 2 of this Subsection;

(4) whenever the (Department), prior to the termination otherwise of such order, determines that the purposes of such order have been achieved and so notifies the court.

(b) The (Department) shall, in each case described in Subsection (a) of this Section, immediately notify the child and his parent or guardian of the termination of its supervision over such child.

Comments on Section 22: *It is essential that, when probation or aftercare supervision ends, as definitive a termination be provided as possible to obviate any chance that the child will continue - at least in his own mind - in "limbo" without a clear conception of his legal status. The same can also be said for the situation which should exist with respect to the child's parent or guardian.*

Sec. 23. DEVELOPMENT OF STATEWIDE SYSTEM OF APPROVED DETENTION AND SHELTER CARE FACILITIES.

The (Department) shall develop a statewide system of approved facilities for the provision of detention and shelter care for children referred to or under the jurisdiction of the court.

Sec. 24. PROVISION OF DETENTION OR SHELTER CARE FOR CHILDREN.

The (Department) shall, subject to the limitations and prohibitions of Sections 33, 34, and 35 of this (Act), and except as may be permitted pursuant to the provisions of Section 65 of this (Act), provide detention or shelter care for any child lawfully taken into custody and brought to the Intake Branch, **Provided, That** no such child shall be detained in a detention or shelter care facility by the (Department) unless it:

(a) is ordered to do so by the court pursuant to the provisions of the (**Family and Juvenile Court Act**); or,

(b) finds that such detention or shelter care is required:

(1) to protect the person or property of the child or of others;

(2) because such child has no parent, guardian, custodian, or other person able and willing to provide supervision and care for such child; or,

(3) to secure the presence of the child at the next court hearing with respect to such child.

Sec. 25. NOTICE THAT DETENTION OR SHELTER CARE IS BEING PROVIDED TO A CHILD.

Whenever the (Department) determines, pursuant to the provisions of Section 24 of this (Act), and except as may be permitted pursuant to the provisions of Section 65 of this (Act), that a child requires detention or shelter care, it shall:

(a) notify the parent, guardian, or other legal custodian of such child of such fact forthwith in the most expeditious manner possible; and,

(b) cause to be delivered with all reasonable speed, but in any event within (48) hours after the commencement of such detention or shelter care, a written notice of such determination to:

(1) the appropriate court, unless such court shall have ordered the provision of such detention or shelter care to such child; and,

(2) the parent, guardian, or other custodian of such child.

Such written notice shall contain a statement as to the necessity for the provision of such detention or shelter care, and such other information as the court may by rule prescribe.

Sec. 26. STANDARDS FOR DETENTION AND SHELTER CARE FACILITIES - APPROVAL.

In the development of a statewide system of detention and shelter care facilities pursuant to the provisions of Section 23 of this (Act), the (Department) shall, with respect to such facilities as are not operated directly by the (Department):

(a) by regulation promulgate standards to be met for approval by the (Department) of detention and shelter care facilities authorized to be provided to children referred to or under the jurisdiction of the court, **Provided, That** such standards shall govern the location, design, construction, equipment, and operations, including, but not limited to, the types of care, the clinical services to be provided, the extent of the program, the admissions policies, the qualifications and numbers of personnel to be employed, and the financing of such facilities, **Provided Further, That** such standards shall require adherence to the provisions of Sections 55-58, inclusive, of this (Act) with respect to the making, maintenance and confidentiality of records; and,

(b) approve such detention and shelter care facilities as the (Department) finds, on the basis of information submitted to it and such investigations as the (Department) deems necessary, substantially meet such promulgated standards.

Sec. 27. FINANCIAL ASSISTANCE FOR LOCAL DETENTION AND SHELTER CARE FACILITIES.

(a) The (Department) shall by regulation establish an equitable system of financial assistance by the (Department) to (towns, cities, counties) for sharing the costs of constructing or operating, or both, of approved detention and shelter care facilities.

(b) Financial assistance with respect to detention facilities shall be made available only in areas where the (Department) determines that the construction and operation of regional detention facilities pursuant to Section 28 would not be feasible, economical, or conducive to the best interests of children needing detention care.

(c) Financial assistance shall be available hereunder only with respect to detention and shelter care facilities meeting and maintaining the standards promulgated pursuant to Section 26 of this (Act).

(d) Financial assistance made available hereunder may be calculated on the basis of per capita payments for detention or shelter care provided in individual cases or on the basis of a subsidy paid for the maintenance of such facilities in readily available status, or on the basis of a combination of both methods, as is best designed to effectuate the establishment and maintenance of the statewide system of detention and shelter care facilities contemplated by the provisions of Section 23 of this (Act).

Comments on Section 27: *This section seeks to set the broad outlines for the direction in which the statewide system of detention and shelter care facilities should be developed. As will be noted, the thrust is toward regional detention facilities rather than local ones.*

It should also be noted that the financing powers granted to the (Department) in subsection (d) are intended to be sufficiently broad so as to enable it to use financial incentives to bring into existence the best possible system of detention and shelter care facilities.

Sec. 28. REGIONAL DETENTION FACILITIES.

Where the construction and operation of an approvable detention facility by a single (town, city, or county) would not be feasible, economical, or conducive to the best interests of children needing detention care, the (Department) may:

(a) make provision, directly or by contract with a single (town, city, or county) for the construction and operation, in accordance with the standards promulgated by the (Department) under this (Act), of regional detention facilities serving the needs of two or more (towns, cities, or counties);

(b) arrive at mutually agreeable arrangements with the (town, cities, or counties) participating in the use of such regional detention facilities for the equitable sharing in the costs of constructing and operating, such regional detention facilities, including necessary expenditures to transport children and their parents, guardians, or custodians to and from such regional detention facilities with funds contributed by the State and by such (towns, cities, or counties).

Sec. 29. CONSTRUCTION AND OPERATION OF DETENTION AND SHELTER CARE FACILITIES BY (DEPARTMENT) - ANNUAL EVALUATIONS OF OPERATIONS.

The (Department) is authorized, where it determines that adequate detention and shelter care facilities cannot otherwise be provided pursuant to Sections 27 and 28 of this (Act) and that such facilities are needed effectively to implement the statewide system of such facilities authorized by the provisions of Section 23 of this (Act), to construct and operate such needed detention and shelter care facilities, **Provided, That** all detention and shelter care facilities operated by the (Department) shall be considered to be approved facilities within the meaning of this (Act) and shall be operated by the (Department) in accordance with the standards promulgated by the (Department) pursuant to the provisions of Section 26 of this (Act), **Provided Further, That** the (Department) shall:

(a) annually cause an evaluation and written report, comparing the operations of each such facility operated by the (Department) with the standards for similar facilities promulgated by the (Department), pursuant to the provisions of Section 26 of this (Act), to be made by a person, persons, agency, or organization independent of the (Department) and having knowledge and experience with respect to the operation of detention or shelter care facilities.

(b) publish the written report of each such evaluation; and,

(c) transmit copies thereof to the Governor and the (Legislature).

Comments on Section 29: *In addition to the new authority contained in this section to construct and operate detention and shelter care facilities necessary to "round out" the statewide system authorized by Section 23, the language requires that whatever facilities are operated by the (Department) must comply with the standards promulgated for the operation of facilities not operated by the (Department) and that (Department) operated facilities should be evaluated annually through an independent evaluation to be given wide distribution.*

In the case of such facilities not operated by the (Department), the sanction provided (see Section 31) for non-compliance with the promulgated standards is the suspension or revocation of the approval of such facilities; the sanction with respect to state operated facilities is public opinion. This is a new device which seeks to avoid the anomalous situation where the standard of care and treatment in state operated facilities can, with impunity, be maintained at a standard lower than that in approved facilities.

Sec. 30. INSPECTIONS OF AND REPORTS FROM APPROVED DETENTION AND SHELTER FACILITIES.

The (Department) shall, with respect to all approved detention and shelter care facilities other than those operated by the (Department):

(a) cause an on-site inspection to be made at least once every (__) months of such facilities and their operations; and,

(b) require the submission at least annually by such facilities of periodic written reports containing such information conerning their operations as the (Department) shall by regulation require.

Comments on Section 30: *This is an attempt to impose by statute certain specific duties upon the (Department) with respect to insuring that approved facilities continue in their operations to meet the established standards.*

In determining how often the inspections required by this section are to be made, it should be borne in mind that there will be a tendency to make such inspections no more frequently than the time specified. On the other hand, the frequency of such inspections should be specified in the light of the burden placed upon the (Department).

Sec. 31. SUSPENSION OR REVOCATION OF APPROVAL OF DETENTION OR SHELTER CARE FACILITIES.

(a) Whenever the (Department) shall have reason to believe that an approved detention or shelter care facility no longer complies substantially with the standards promulgated by the (Department) pursuant to Section 26 of this (Act), the (Department) shall cause to be delivered to such facility a written, detailed notice to that effect, setting forth a time certain within which substantial compliance with such standards should be attained.

(b) If, after the expiration of such time certain, the (Department) has reason to believe that such facility still does not comply substantially with such standards, the (Department) shall cause to be delivered to such facility a written notice of an opportunity to be heard with respect to the allegations of the (Department) with respect to the non-compliance of such facility with such standards.

(c) If, after affording such facility a reasonable opportunity to be heard, the (Department) finds, on the basis of all the facts available to it, that such facility fails

to comply substantially with such standards, the Department shall:

(1) suspend its approval of such facility until it shall have substantially complied with such standards; or,

(2) revoke its approval of such facility if the (Department) further finds that there is no reasonable expectation of substantial compliance with such standards within a reasonable time.

(d) Notice of the finding by the (Department) suspending or revoking its approval of a detention or shelter care facility shall be promptly delivered in writing by the (Department) to the court, to the appropriate law enforcement agencies, and to such other individuals or agencies as have reason to be informed of the (Department's) action.

Comments on Section 31: *This section merely spells out the legal safeguards which should surround the (Department's) refusal to approve or the suspension or revocation of an approval of a detention or shelter care facility in order to prevent unreasonable, arbitrary, or capricious action on the part of the (Department).*

It should be noted that failure to comply must be substantial in order to invoke the sanctions provided by this section.

Sec. 32. APPEALS FROM DECISIONS BY (DEPARTMENT) REFUSING TO APPROVE OR SUSPENDING OR REVOKING APPROVAL OF DETENTION OR SHELTER CARE FACILITY.

The action of the (Department) in refusing to approve or in suspending or revoking the approval of a detention or shelter care facility shall be subject to review by appeal to the (**insert name of appropriate court**) **Provided, That,** unless otherwise ordered by such court, the action of the (Department) shall not be stayed or reversed pending the outcome of such appeal.

Comments on Section 32: *It should be noted that this section specifically provides that the action of the (Department) is not to be suspended pending the outcome of the judicial appeal, unless the court orders otherwise. This proviso has been inserted because, it should be remembered, children are being held in such detention or shelter care facility and the allegation has been made - and proven to the satisfaction of the Head of the (Department) - that such facility is being operated at a standard substantially below that required by the (Department).*

Sec. 33. LIMITATIONS ON PROVISION BY (DEPARTMENT) OF DETENTION OR SHELTER CARE.

The (Department) shall not provide detention or shelter care for:

(a) a child alleged to be delinquent in a facility used for the care and treatment of children adjudicated delinquent, or in a detention or sheltered care facility, other than those who, after having been adjudicated delinquent, are in such facility only for a period not to exceed ___ days pending transfer to another facility;

(b) a child found to be in need of supervision, unless also found to be delinquent, in a facility for the shelter or detention, or care and treatment of children adjudicated delinquent.

Sec. 34. PROHIBITIONS WITH RESPECT TO PROVISION OF DETENTION OR SHELTER CARE.

(a) After (**Note #1**) it shall be unlawful to detain any child referred to or under the jurisdiction of the court in any detention or shelter care facility other than one approved by the (Department) in accordance with the provisions of this (Act) or in a facility the approval of which by the (Department) is suspended or has been revoked.

(b) After (**Note #1**) it shall be unlawful to detain any child contrary to the provisions of Subsections (a) or (b) of Section 33 of this (Act).

Comments on Section 34: *Note #1: The date fixed should be one which takes into consideration the time which will be required to establish a system for the approval of detention and shelter care facilities. The dates need not necessarily be the same.*

Sec. 35. DETENTION OF CHILDREN IN JAIL - WHEN AND WHERE PROHIBITED.

(a) It shall be unlawful for any person in charge of or employed by a jail or other facility used for the detention or confinement of adult offenders or persons accused or convicted of crimes (hereinafter in this Section called a "jail") knowingly to receive for detention or detain in such jail any person whom he has or should have reason to believe is a child and who is alleged to be in need of supervision, or, after (**Note #1**), to be a delinquent.

(b) Until (**Note #1**), a child who is alleged to be delinquent may be detained in a jail if:

(1) a detention care facility, approved by the (Department) pursuant to the provisions of Section 26 of this (Act), is not available for the detention of such child within a reasonable distance, as defined by the (Department), from such jail; and,

(2) such jail has been approved for the detention of such child by the (Department).

(c) The (Department) may approve, for use for the purposes of and in accordance with the provisions of this Section, any jail which it finds maintains, for the detention of any such child, an appropriate room under adequate supervision, separate and apart from the rooms where persons accused or convicted of crimes are confined or detained, **Provided, That** the (Department) shall by regulation promulgate standards governing the operations of such portions of such jails as are to be used for the detention of children, pursuant to this Section, and shall cause such jails to be inspected at least once every (**Note #2**) months.

(d) Whenever a person in charge of or employed by a jail receives and detains a child, pursuant to Subsection (b) of this Section, he shall immediately give notice thereof to the court and may continue to detain such child only if the court so orders after finding, pursuant to the provisions of the (**Family and Juvenile Court Law**), that such continued detention is reasonably necessary for the safety and protection of such child and the public.

Comments on Section 35: *Note #1: The date to be inserted here will depend on the length of time needed by the (Department) to establish a statewide system of detention and shelter care facilities. This provision could be changed to grant authority to the (Department) to fix the date by regulation but no later than a date certain.*

Note #2: the date fixed will depend on the situation existing in the State and the work load of the (Department).

The recommendations contained in this section are phrased in terms which are absolute and have been intentionally so phrased since the problem of detaining children in jails is one which has been in existence for quite some time. It should be noted that this recommendation would make it a crime to confine a child contrary to its provisions. It may well be that the solution to the problem may require some such drastic solution. This is not to minimize the need for suitable detention and shelter care facilities and the argument that children are confined in jails because other facilities are not in existence. It may be of assistance in the establishment of an adequate system of detention and shelter care facilities to set a date certain after which it would become a crime to confine a child in jail.

Sec. 36. DEVELOPMENT OF STATEWIDE SYSTEM OF RESIDENTIAL CHILD CARING FACILITIES.

The (Department) shall develop, or assist in the development, of a system of community based residential child caring facilities which shall meet the standards for licensure and be licensed pursuant to the provisions of (insert reference to appropriate licensure statutes), (hereinafter in this (Act) called "licensed residential child caring facilities") and which shall:

(a) be designed for the provision of residential care and treatment of children whom the court has adjudicated delinquent or in need of supervision and vested their legal custody in the (Department), or for the provision of emergency maintenance pursuant to the provisions of Sections 55-58, inclusive, of this (Act);

(b) be of various types so as to meet the particular needs of such children to the maximum extent possible in their own communities; and,

(c) include foster family homes, group homes, institutions for the care of larger numbers of children than at group homes, forestry camps, half-way houses, and emergency maintenance.

Comments on Section 36: *This section assumes the existence of statutory licensing requirements for these types of residential child caring facilities which contain requirements along the lines of those suggested for approved detention and shelter care facilities, including the confidentiality of records and testimonial privilege.*

The thrust is toward the development not only of a diversified system of such facilities but also toward a reversal of the trend toward large institutions and in the direction of small facilities located in the community from which the child comes.

Sec. 37. INSPECTIONS OF AND REPORTS FROM CHILD CARING FACILITIES.

The (Department) shall, with respect to all residential child caring facilities which it uses:

(a) cause an on-site inspection to be made at least every (__) months of such facilities and their operations; and,

(b) require the submission by such facilities of periodic written reports containing such information concerning their operations as the (Department) shall by regulation require.

Comments on Section 37: *In determining how often the inspections required by this section are to be made, it*

should be borne in mind that there will be a tendency to make such inspections no more frequently than the time specified. On the other hand, the frequency of such inspections should be specified in the light of the burden placed upon the (Department).

Sec. 38. FINANCIAL ASSISTANCE FOR LOCAL RESIDENTIAL CHILD CARING FACILITIES.

(a) The (Department) shall, by regulation, establish an equitable system of financial assistance by the (Department) to (towns, cities, counties, or private non-profit agencies or organizations, or individuals) for paying the whole or part of the costs of constructing or operating, or both, of residential child caring facilities in such manner as to encourage the development of the statewide system of such facilities contemplated by Section 36 of this (Act) so as to provide, insofar as possible, for the provision of care and treatment to children coming within the jurisdiction of the court in their own communities;

(b) Financial assistance made available hereunder shall be calculated on such basis as to encourage the development to the maximum extent possible the establishment and maintenance of a wide variety of residential child caring facilities designed to meet the varying needs of such children.

Sec. 39. CONSTRUCTION AND OPERATION OF RESIDENTIAL CHILD CARING FACILITIES BY (DEPARTMENT) - EVALUATIONS OF OPERATIONS.

The (Department) is authorized, when it determines that adequate residential child caring facilities cannot be provided otherwise pursuant to the provisions of Section 38 of this (Act) and that such facilities are needed effectively to implement the statewide system of such facilities contemplated by the provisions of Section 36 of this (Act), to construct and operate needed residential child caring facilities, **Provided, That** all residential child caring facilities operated by the (Department) shall be considered licensed residential child caring facilities within the meaning of this (Act) and shall be operated by the (Department) in accordance with the standards promulgated by the (name of State licensing agency), **Provided Further, That** the (Department) shall annually cause an evaluation, comparing the operations of each such residential child caring facility operated by the (Department) to such standards, to be made by a person, persons, agency, or organization independent of the (Department) and having knowledge and experience with respect to the operation of residential child caring facilities and shall publish a written report of each such evaluation and transmit copies thereof to the Governor and the (Legislature).

Comments on Section 39: *In addition to the new authority contained in this section to construct and operate residential child caring facilities necessary to "round out" the statewide system authorized by Section 36, the language requires that whatever facilities are operated by the (Department) must comply with the standards promulgated for the operation of facilities not operated by the (Department) and that (Department) operated facilities should be evaluated annually through an independent evaluation to be given wide distribution.*

In the case of such facilities not operated by the (Department) the sanction provided for non-compliance with the promulgated standards is the suspension or revocation of the license of such facilities; the sanction with respect to state operated facilities is public opinion. This is a new device which seeks to avoid the anomalous situation where the standard of care and treatment in state operated facilities can, with impunity, be maintained at a standard much lower than in licensed facilities.

Sec. 40. LIMITATIONS ON PROVISION BY (DEPARTMENT) OF CARE AND TREATMENT IN RESIDENTIAL CHILD CARING FACILITY.

The (Department) shall not provide care and treatment in a residential child caring facility for a child whose legal custody is vested in the (Department) as a child in need of supervision in any such facility used for the provision of care and treatment to children found to be delinquent.

Sec. 41. DIAGNOSIS OF CHILD AFTER COMMITMENT TO (DEPARTMENT).

The (Department) shall, as soon as possible after the legal custody of a child is vested in it by the court, in accordance with regulations promulgated by it, cause an examination and study to be made of such child and an investigation to be conducted into all pertinent circumstances of his life and behavior, **Provided, That** data concerning such child secured in any previous examinations and studies undertaken pursuant to the provisions of this (Act) may, if sufficiently current, be utilized by the (Department) in lieu of or in supplementation of a new examination and study of such child.

Comments on Section 41: *Where the program dealt with in these materials is to be administered by a State Department administering other programs under which information received during the course of administering*

such other programs may not be used for any purpose other than the administration of such programs, a proviso along the following lines should be inserted to clarify the scope of the previously secured information which the (Department) may utilize as part of the initial diagnosis:

"**Provided Further, That** *this Section shall not require any disclosure which would be inconsistent with the requirements of any Federal statutes under which grants are made to the State.*"

or:

"**Provided Further, That** *this Section shall not require any disclosure which would be inconsistent with the requirements of (reference to appropriate statutes).*"

Sec. 42. PERIODIC REEXAMINATIONS OF CASES OF CHILDREN COMMITTED TO (DEPARTMENT).

The (Department) shall cause to be made periodic reexaminations of the case of each child whose legal custody is vested in the (Department) and who has not been finally discharged from such legal custody, **Provided, That** such reexaminations shall:

(a) include a study of all pertinent circumstances of such child's personal and family situation and an evaluation of the progress made by such child since the previous study;

(b) be made for the purpose of ascertaining all relevant facts necessary to determine whether existing decisions, orders, and dispositions with respect to such child should be modified or continued in force; and,

(c) be conducted as frequently as the (Department) deems necessary, but in any event, with respect to each such child, at intervals not to exceed (six) months.

Sec. 43. VISITATIONS OF CHILD PLACED IN RESIDENTIAL CHILD CARING FACILITY.

Whenever the (Department) places any child whose legal custody is vested in the (Department) in a residential child caring facility, other than a facility operated directly by the (Department), the (Department) shall cause such residential child caring facility to be visited as often as necessary in order to consult with and regarding such child, **Provided, That** the (Department) shall not place any such child in a residential child caring facility unless such facility shall agree that persons designated by the (Department), including parents, shall have such visitation rights and that it will report to the (Department) as often as the (Department) may require with respect to the condition of and the care and treatment accorded to such child.

Sec. 44. DETERMINATION OF TREATMENT FOR CHILD WHOSE LEGAL CUSTODY IS VESTED IN (DEPARTMENT).

With respect to a child whose legal custody has been vested in the (Department), the (Department), after and on the basis of an objective consideration of all available information concerning such child shall:

(a) place such child:

(1) in such residential child caring facility within the State as is most suitable for the provision of needed care and treatment for such child; or,

(2) where approved by the court and in accordance with the provisions of the Interstate Compact for Juveniles, in a comparable facility in another State;

(b) following the placement of such child outside his own home, pursuant to the provisions of subsection (a) of this Section, permit such child to return to his own home under supervision and upon such terms and conditions as the (Department) believes to be most conducive to his acceptable behavior and rehabilitation for a period not to exceed (3) months, **Provided, That** the (Department) shall promptly notify the court of the action taken under this subsection;

(c) notify, promptly and in writing, the parent or guardian of such child of each and every major treatment decision made in accordance with the provisions of this Section.

Comments on Section 44: *This section does not provide for placing or permitting a child to remain in his own home directly following the vesting of the legal custody of such child in the (Department). The assumption is that legal custody would not have been removed from the child's parents unless care outside the home were needed. It is recommended that a limit be placed upon the time that the (Department) may continue to exercise legal custody over a child returned to his own home. Retention of legal custody in such situations is likely to be confusing to both the child and his parents. A maximum of three months is recommended for the continuation of this situation.*

Sec. 45. LIMITATION ON AUTHORITY TO DELEGATE MAJOR TREATMENT DETERMINATIONS.

All major treatment determinations pursuant to the provisions of Subsections (a) and (b) of Section 44 of this (Act) shall be made only by the Director of the (Division of Delinquency Services), or his Deputy, in consultation with appropriate treatment personnel.

Sec. 46. POWERS OF (DEPARTMENT) TO AUTHORIZE MEDICAL, PSYCHIATRIC, SURGICAL, OR DENTAL CARE - LIMITATIONS.

With respect to any child whose legal custody is vested in the (Department):

(a) Except in case of emergency, the (Department) shall not authorize or permit any major surgery to be performed upon or general anesthetic to be administered to such child unless specific written consent thereto shall first have been obtained from the parent or guardian of such child, or, in the absence of such consent, from the court which vested legal custody of such child in the (Department);

(b) Upon the authorization of an attending physician, psychiatrist, surgeon, or dentist, the (Department) may authorize the provision to such child of such other necessary medical, psychiatric, surgical, or dental care and treatment as may be required by such child, **Provided, That** where the provision of such care and treatment is contrary to the religious tenets and beliefs of such child, the provision of such care and treatment to such child may be authorized by the (Department) only upon the specific, written consent of the parent or guardian of such child or, in the absence of such consent, upon the specific written order of the court which vested legal custody of such child in the (Department);

(c) When such child has been placed by the (Department) in a residential child caring facility, other than one administered by the (Department), the person or persons administering such facility shall have the authority to authorize the provision to such child of necessary medical, psychiatric, surgical, or dental care only to the extent that such authority has been delegated to such person or persons with respect to particular children and subject to the same limitations as are applicable to the (Department) under this (Act).

Comments on Section 46: *It is highly desirable that the statute set forth as clearly as possible the authority of the (Department) to authorize medical, psychiatric, surgical and dental care for a child whose legal custody is vested in the (Department). The problem is real, not only in relation to the rights of the child and the child's parents but also in the light of the growing quantity of malpractice suits. A specific statutory provision could be of great assistance in obviating any possible confusion.*

Sec. 47. PETITIONS FOR REVIEW.

(a) Any child whose legal custody is vested in the (Department) by the court, and the parent, guardian or custodian of such child, shall be informed of his right to petition the (Title of Executive Head of Department), in accordance with promulgated regulations, for a hearing with respect to:

(1) the failure to examine such child in accordance with the provisions of Section 41 of this (Act);

(2) the failure to reexamine such child within (six) months after a previous examination, in accordance with the provisions of Section 42 of this (Act);

(3) any treatment decision required to be made by the Director of the (Division of Delinquency Services) or his Deputy pursuant to the provisions of Section 45 of this (Act);

(4) a request to the (Title of the Executive Head of Department) for the issuance of an order taking such child into custody for alleged violations of the terms and conditions of such child's aftercare supervision, as provided in Subsection (a) of Section 49 of this (Act);

(5) the taking of such child into custody for violations of the terms and conditions of his aftercare supervision as provided in Subsection (b) of Section 49 of this (Act).

(b) The (Title of Executive Head of Department) shall afford such child or his parent, guardian, or custodian an opportunity for a full and fair hearing upon such petition within (thirty) days and shall, at such hearing, give the child and his legal counsel, the parent, guardian, or custodian of such child, and their legal counsel, an opportunity to be heard and to present such information as may be deemed relevant and render a decision on the petition within (five) days after the conclusion of such hearing.

(c) Pending the determination by the (Title of Executive Head of the Department) with respect to a petition for review filed pursuant to the provisions of Subsection (a) of this Section, the authority of the (Department) to take such action, in accordance with the provisions of this (Act), with respect to such child, shall in no wise be affected.

Sec. 48. APPEALS TO COURT.

(a) A child whose legal custody is vested in the (Department or his parent, guardian, or custodian shall have the right to appeal to the court:

(1) where the petition to the (Title of Executive Head of Department), as provided in Section 47 of this (Act), has not been acted on or decided by the (Title of Executive Head of Department) within the time specified in such Section;

(2) where the child or his parent, guardian, or custodian feel aggrieved by any decision or order made by or failure to act on the part of the (Title of Executive Head of Department) pursuant to the provisions of Sections 47 of this (Act).

(b) Pending the determination by the court of such appeal, the authority of the (Department) to take such

action as it may deem necessary, in conformity with the provisions of this (Act), shall in no wise be affected, except to the extent ordered by the court.

Sec. 49. TAKING INTO CUSTODY AND DETAINING CHILD FOR VIOLATIONS OF TERMS AND CONDITIONS OF AFTERCARE SUPERVISION.

(a) With respect to any child whose legal custody was vested in the (Department), who has been released from a residential child caring facility by the (Department) and returned to his own home, and has been placed on aftercare supervision, if, in the opinion of a designated employee of the (Department), such child is in substantial violation of the terms and conditions of his release, such employee may:

(1) notify the (Title of Executive Head of Department) of such alleged violation and, if the (Title of Executive Head of Department), after an opportunity for a hearing as provided in Section 47 of this (Act), issues a written order to such effect, take such child into custody and place him in such appropriate residential child caring facility as may be designated in such order, notifying the child, the child's parent, guardian, or custodian of their right to legal counsel and to appeal the issuance and execution of such order in accordance with the provisions of Section 48 of this (Act);

(2) if such employee has reason to believe that permitting such child to remain in his own home would be dangerous to him or to the community or that such child is about to flee the jurisdiction of the court, take such child into custody and place him in an appropriate residential child caring facility or detention care facility until determinations as to such child's further care and treatment are made by the (Department) pursuant to Section 44 of this (Act), **Provided, That** such employee, at the time of taking such child into custody shall advise such child as to the specific terms and conditions of his release which he is alleged to have violated and of his right to legal counsel and to appeal in accordance with the provisions of Section 47 of this (Act).

(b) When called upon by any designated employee of the (Department), all peace officers shall assist in taking a child into custody pursuant to the provisions of this Section.

Comments on Section 49: *A distinction is made in this section with respect to those situations in which speedy action is required in taking the child into custody in order to protect him or the community and those where immediate action is not necessary.*

In both cases the suggested language requires that there be a substantial violation by the child of the terms and conditions of aftercare supervision and grants the child the right to appeal to the court.

Throughout this section the attempt is made to balance necessities - the need for meaningful enforcement of the terms and conditions of aftercare supervision and the need for the child to be protected against arbitrary, capricious or petty enforcement of such terms and conditions which can become so onerous as to make the attainment of the objectives of release difficult.

Where there is no emergency (subsection (a)(1)), but it is determined that the terms and conditions are not being observed in a substantial fashion and that the child needs further care and treatment in a residential child caring facility, the decision should be made by the (Title of Executive Head of Department) who has the responsibility for making basic treatment decisions.

On the other hand, where there is an emergency (subsection (a)(2)) because the child is endangering himself or the community, the employee of the (Department) must move quickly and should be empowered to take, or authorize the taking, of such child into custody until such time as the (Title of Executive Head of Department) can determine what further treatment such child needs. The determination, in the first instance, that the terms and conditions of the child's release have been substantially violated should be made by a designated employee of the (Department) and not by a peace officer.

Sec. 50. TAKING INTO CUSTODY AND DETAINING CHILD WHO HAS RUN AWAY FROM RESIDENTIAL CHILD CARING FACILITY.

Any child:

(a) whose legal custody has been vested in the (Department);

(b) who has been placed by the (Department) in a residential child caring facility; and,

(c) who has escaped or run away therefrom, may be taken into custody by a peace officer or an employee of the (Department) or of such residential child caring facility designed by the (Department) without a warrant or an order issued by the (Title of Executive Head of Department) and detained in a suitable residential child caring facility or detention care facility until determinations as to such child's further care and treatment are made by the (Department) pursuant to the provisions of Section 44 of this (Act).

Comments on Section 50: *Presumably existing statutes would authorize a peace officer to take a child into custody only when such child is found to be violating a law or ordinance or, often, is found in surroundings endangering his welfare. The runaway from a residential child caring facility may not meet either of these conditions. Specific authority would therefore be needed in order to take such child into custody.*

Sec. 51. CLOTHING, MONEY, TRANSPORTATION TO BE FURNISHED UPON RELEASE FROM RESIDENTIAL CHILD CARING FACILITY.

The (Department) shall, in accordance with regulations promulgated by it, insure that each child released by it from a residential child caring facility is furnished with suitable clothing, transportation to his home or to the place where a suitable residence or employment has been found for such child, and such an amount of money as may be determined to be necessary to facilitate such child's readjustment to living away from such residential child caring facility.

Comments on Section 51: *This section is broadly phrased so as to state only the objectives sought to be attained, with the details to be supplied by regulations.*

It is intended to be applicable in all release situations - to the child returned to his own home under supervision, to the child placed in the community under supervision, or to a child released upon the termination of the Department's legal custody of such child.

Sec. 52. PAYMENT OF WAGES FOR WORK PERFORMED IN RESIDENTIAL CHILD CARING FACILITY.

The (Department) may provide, in accordance with regulations promulgated by it, for the payment of reasonable wages for work performed by a child placed in a residential child caring facility while there housed and not part of a work release program under Section 53 of this (Act), the sums so earned to be paid to or credited to the account of such child or paid to or on behalf of such child to the parent, guardian, custodian, or dependents of such child in such manner and in such proportions as the (Department) may direct.

Comments on Section 52: *Under proper circumstances and with adequate safeguards, the payment of wages for work performed in a residential child caring facility can be an important factor in the treatment and rehabilitation of a delinquent child or a child in need of supervision.*

The statutory language suggested is sufficiently broad to permit payments on behalf of the child by way of restitution.

This provision is to be distinguished from that suggested in Section 53 relating to work release programs.

Sec. 53. ESTABLISHMENT OF WORK RELEASE PROGRAMS.

(a) The (Department) may, in accordance with regulations promulgated by it pursuant to this Section, establish a work release program for children whose legal custody is vested in the (Department) and who are receiving care and treatment in a residential child caring facility.

(b) Under such a work release program, any such child may be authorized to secure or continue in suitable employment outside of such residential child caring facility and, unless otherwise authorized by the (Department) with respect to specific cases, return to and remain in such facility during non-working hours.

(c) Employment under such work release program shall be at a wage at least as high as the prevailing wage for similar work in the area where the work is performed and in accordance with the prevailing working conditions in such area, **Provided, That** such employment shall not be permitted where there is a labor dispute involving the establishment in which such child is or is to be employed.

(d) It shall be the duty of the employer of a child participating in a work release program hereunder to transmit to the (Department) the earnings of such child and such earnings shall not be subject to levy by way of attachment or in any other lawful manner after receipt by such employer of a request by the (Department) to transmit such earnings to it, **Provided, That** the transmission to the (Department), pursuant to this Section, of the earnings of such child shall operate to discharge such employer from any further obligation to such child, except with respect to any taxes lawfully withheld from the wages of such child.

(e) The earnings transmitted to the (Department) by a child's employer under a work release program shall be held to the account of such child, **Provided, That** the (Department) shall make payments from, and to the extent of, the earnings thus received as follows:

(1) to the account of the (Department) for the costs of such child's care, treatment, and personal expenses, both inside and outside the residential child caring facility and so much of the costs of administering this Section as is allocable to such child;

(2) to the dependents of such child for such amounts as the child is legally obligated to pay; and,

(3) with the consent of such child, for the whole or part of any preexisting debts of such child.

(f) The (Department) may retain any balance remaining until the termination of the (Department's) legal custody of such child.

Comments on Section 53: *This suggestion is modeled on the California law with certain revisions deemed necessary to clarify its intent and meaning. It should provide sufficient flexibility for the establishment of a work release program while retaining the safeguards which seem necessary to protect the child's working situation.*

Sec. 54. TERMINATION OF (DEPARTMENT'S) LEGAL CUSTODY.

Where the legal custody of a child is vested in the (Department), and such custody has not been sooner terminated by the court pursuant to the provisions of the (**Family and Juvenile Court Act**), or by the (Department) pursuant to the provisions of this Section, the authority of the (Department) to exercise legal custody over such child shall terminate:

(a) when such child reaches the age of twenty-one years, in which case the (Department) shall:

(1) immediately notify such child of the termination of the (Department's) legal custody of such child; and,

(2) if care and treatment is being provided for such child in a residential child caring facility, release such child therefrom and facilitate his return to his own home, if the child so desires, or otherwise facilitate his reentry into the community;

(b) at the expiration of (12) months from the date on which legal custody was vested in the (Department) or upon the expiration of any extension of such date sought and obtained by the (Department) from the court pursuant to the provisions of the (**Family and Juvenile Court Act**) prior to the expiration of such original date, in which case the (Department) shall:

(1) immediately notify such child of the termination of the (Department's) legal custody of such child;

(2) if care and treatment is being provided for such child in a residential child caring facility, release such child therefrom and facilitate his return to his own home; and,

(3) notify the court of the action taken;

(c) at the expiration of (3) months after the (Department) has placed such child in his own home, pursuant to the provisions of Section 44 of this (Act), in which case the (Department) shall notify the court of the action taken;

(d) when the (Department) determines that the purposes of the order vesting legal custody over such child have been achieved, in which case the (Department) shall:

(1) immediately notify such child of the termination of the (Department's) legal custody of such child;

(2) if care and treatment is being provided for such child in a residential child caring facility, release such child therefrom and facilitate his return to his own home; and,

(3) file with the court a notification of the (Department's) termination of legal custody of such child and requesting the issuance of such further orders by the court, pursuant to the provisions of the (**Family and Juvenile Court Act**), with respect to such child as the court may deem warranted.

Comments on Section 54: *The time specified in subsection (b) should be that specified by the (Family and Juvenile Court Act) for the duration of a court order vesting legal custody in the (Department).*

The time specified in subsection (c) should be that specified in Section 44.

This provision has two major objectives:

(1) certainty on the part of all parties involved as to the exact status of the child at all times;

(2) adding an additional safeguard to insure that the child does not become "lost" in the system.

Sec. 55. MAKING AND MAINTENANCE OF WRITTEN RECORDS.

The (Department) shall cause to be made and maintained full and complete written records of all studies and examinations, and of the conclusions and recommendations based thereon, and of all major decisions and orders concerning the disposition and treatment of every child with respect to whom the (Department) provides, or arranges to have provided, care, treatment, and supervision pursuant to this (Act).

Comments on Section 55: *Requirements along these lines are needed to reinforce previous sections of these materials dealing with treatment decisions and appeals from them. The right of appeal becomes an empty one when there is insufficient written basis for the decision from which an appeal is taken.*

Similarly, provisions such as those contained in this section would act an another means of ensuring that children will not become "lost" in the system.

It should be noted that the requirements of this section would apply to the records which must be kept by detention and shelter care facilities and residential child caring facilities, when such facilities are used by the (Department) for providing care and treatment for a child.

This section would, of course, apply to the records which must be maintained by the (Department) itself.

Requirements as to the records which must be kept by the court itself would appear in the laws relating to the court.

Sec. 56. RESTRICTIONS ON USE OF RECORDS.

With respect to any child for whom care and treatment services are provided, directly or indirectly, by the (Department) pursuant to this (Act) as a child alleged or found to be delinquent or in need of supervision, it shall be unlawful, except for purposes

directly connected with the administration of this (Act) and in accordance with regulations promulgated by the (Department) pursuant to this (Act), or as in this (Act) otherwise expressly provided, or upon the consent of such child or the attorney for such child, or upon the specific order of the court pursuant to the provisions of the (**Family and Juvenile Court Act**), for any individual agency, organization or facility knowingly to solicit, disclose, receive, or make use of, or authorize, permit, participate in, or acquiesce in the use of any information in or derived from such child's legal, social, medical, or psychological records, or obtained, directly or indirectly from the records, papers, files, or communication by or to the (Department) or any individual, agency, organization, or facility utilized by the (Department) for the provision of such care and treatment services for such child.

Sec. 57. TESTIMONIAL PRIVILEGE.

Any person having possession of information, the divulgence of which is prohibited or restricted under Sections 56 or 58 of this (Act), shall not be required to testify as to or produce any document containing such information in any court or other place except in accordance with the provisions of such Section.

Comments on Section 57: *In seeking to confer a testimonial privilege upon those having information under this program, this suggestion is breaking new and very important ground.*

Sec. 58. SEALING OF RECORDS.

Where, pursuant to the provisions of the (**Family and Juvenile Court Act**), the records with respect to a particular child have been ordered sealed, the (Department) and any person, persons, agency, organization or facility included within the provisions of Section 56 of this (Act) shall, upon inquiry regarding such child, reply that such child is not known to the (Department) or to such person, persons, agency, organization, or facility.

Comments on Section 58: *Where authority is given to the court to seal records, a complementary provision such as this would be needed and should extend not only to the (Department) but to all persons, agencies, organizations and facilities utilized in the provision of care and treatment for a child at the request of the (Department). While it might create administrative difficulties in some types of residential child caring facilities, if the sealing provisions are to be meaningful a provision such as this one is needed.*

Sec. 59. INFORMATION FROM OTHER AGENCIES CONCERNING CHILD COMMITTED TO OR UNDER THE SUPERVISION OF (DEPARTMENT).

The police and school authorities and other public officials and agencies shall, upon the request of the (Department), promptly make available to such (Department) all pertinent information in their possession with respect to a child whose legal custody is vested in or who is under the supervision of the (Department) pursuant to this (Act) or the provisions of the (**Family and Juvenile Court Act**).

Sec. 60. GUARDIANSHIP OF THE PERSON OF A CHILD - DUTIES OF (DEPARTMENT).

If at any time while the legal custody of a child is vested in the (Department) and prior to the final discharge of such child from such legal custody or while a child is under the supervision of the (Department) pursuant to the provisions of the (**Family and Juvenile Court Act**) or while a child is being provided services pursuant to the provisions of Section 65 of this (Act), the (Department) learns that such child for any reason does not have:

(a) a natural or adoptive parent in a position to exercise effective guardianship of such child; or,

(b) a legally appointed guardian of his person, it shall be the duty of the (Department) thereupon to file a petition in the appropriate court for the appointment of a guardian of the person of such child, **Provided, That** no employee of the (Department) shall accept appointment as the guardian of the person of such child.

Comments on Section 60: *Each child whose legal custody is vested in the (Department) should have a private individual - whether a natural or adoptive parent or a legally appointed guardian of his person - able to exercise effective guardianship. Such an individual would be expected to safeguard his rights, to have an interest in his well-being, and to serve him as a continued link with the community on a personal, individualized basis, ordinarily extending beyond the time that the legal custody of such child would be vested in the (Department).*

To appreciate the full significance of this recommendation as a safeguard for the rights of the child, while at the same time permitting the effective operation of the (Department's) program, this recommendation should be read, for example, in conjunction with the recommendations set forth in section 44, 46, and 47 of these materials.

The (Department) should be free to petition the court for the appointment of a guardian of the person of a child, with respect to whom it has certain

responsibilities, even though such child has a parent living, when there are reasonable grounds to believe that the latter is not in a position to exercise guardianship functions effectively.

In that connection it is important to distinguish between the appointment of a guardian of the person of a child and termination of parental rights.

It is recommended that no officer or employee of the (Department) become the guardian of the person of a child whose legal custody is vested in the (Department) or over whom the (Department) exercises supervision in order to avoid conflicts between the official duties imposed upon such officer or employee of the (Department) and the loyalties involved in serving as the guardian of the person of such child.

The provisions of this section would not apply in the case of a child accepted by the (Department) under an agreement with the Federal Government (see section 10 of these materials), since legal custody in that situation would not be vested in the (Department) but would remain in the appropriate Federal agency.

Sec. 61. TRANSFER OF FACILITIES TO (DEPARTMENT).

Effective on (Note #1), all rights, powers, responsibilities, and duties now exercised by the following agencies: (Note #2) pursuant to (citations of pertinent statutes) with respect to the following facilities: (list of names and locations of the facilities to be transferred) and all facilities, properties of every kind and nature, personnel, records, appropriations, funds, and all other resources available on such date to such agencies for the administration of such facilities shall be transferred to and shall thenceforth be vested and exercised by the (Department) pursuant to the provisions of this (Act).

Comments on Section 61: *Note #1: To give the (Department) an opportunity to make the necessary arrangements to "take over" the administration of existing facilities which it does not already administer, the effective date of such transfer may be postponed for a period beyond the effective date of the remainder of the (Act). See also the provisions of section 76 of these materials.*

Note #2: This list would include only those agencies exercising control over the facilities transferred.

The provisions of this section would not be needed if the (Department) is already responsible for the administration of all the facilities to be transferred.

There would seem to be no need for special provisions transferring to the (Department) the legal custody of children where such legal custody has been vested in the named facilities to be transferred. The provisions of this section would transfer to the (Department) all the powers and duties of those facilities, which would include those related to legal custody.

However, where, under existing statutes, legal custody of children has been vested directly in the individual in charge of a facility - for example, where the legal custody of children is vested in the superintendent of a training school - additional statutory language would be needed to effectuate the transfer of the powers and duties of such individual to the (Department).

Sec. 62. CONFINEMENT OF CHILD IN PENAL INSTITUTION PROHIBITED.

No child whose legal custody is vested in the (Department) after having been found by the court to be a delinquent child or a child in need of supervision shall be confined by the (Department) in any facility used for the confinement or detention of persons accused or convicted of crimes.

Sec. 63. AUTHORITY OF (DEPARTMENT) WITH RESPECT TO MENTALLY ILL OR MENTALLY RETARDED CHILD.

Whenever the (Department) shall have reasonable ground to believe that a child whose legal custody has been vested in it is mentally ill or mentally retarded, the (Department) shall:

(a) petition the court for a review and rescission of the order vesting legal custody of such child in the (Department) and for the initiation of proceedings for the adjudication of such child as mentally ill or mentally retarded in accordance with the provisions of (insert reference to appropriate statutes); and,

(b) cause written notice of the filing of such petition to be served upon such child and upon the parent, guardian or custodian of such child.

Comments on Section 63: *A child whose legal custody is vested in the (Department) should not be transferred solely at the discretion of the (Department) to a facility for the care and treatment of mentally ill or mentally retarded children even for a limited time, even though such transfer is solely for the purpose of diagnosis.*

The basic decision of the court to transfer the legal custody of the child to the (Department) was founded on a finding by the court that such child was delinquent or in need of supervision. If the basis for the court's decision is to be changed, then it seems obvious that a reevaluation of the decision should be made and should be made only by the court after affording the child and his parent or guardian an opportunity for a hearing on the matter.

Sec. 64. DUTY OF (DEPARTMENT) TO ACCEPT LEGAL CUSTODY OF OR EXERCISE SUPERVISION OVER CHILDREN.

The (Department) shall:

(a) accept legal custody of all children vested in it by the court pursuant to the (**Family and Juvenile Court Act**); and,

(b) exercise supervision, pursuant to this (Act), over all children placed on probation or determined to be in need of supervision by the court pursuant to the (**Family and Juvenile Court Act**).

Sec. 65. POWERS AND DUTIES OF (DEPARTMENT) WITH RESPECT TO RUNAWAYS.

(a) The (Department) shall provide such services and pay for such costs with respect to runaway children from other States as may be required pursuant to the provisions of the Interstate Compact for Juveniles and as may be authorized under this Section.

(b) With respect to any child who has run away from home, the (Department) shall provide for the establishment, directly or through grants to or contracts with public or private agencies and organizations, of a coordinated, inclusive system under which:

(1) emergency maintenance is provided for such child, **Provided, That,** notwithstanding any other provision of law, such emergency maintenance may be provided, for a limited time, in accordance with regulations promulgated by the (Department), by the (Department) or by any public or private agency or organization authorized so to do by the (Department), without reporting the provision of such care or the status of such child to the appropriate law enforcement agencies or to the parent, guardian or custodian of such child;

(2) a study is made, within such time as may be prescribed by regulations promulgated by the (Department), of the home situation of such child, and:

(i) if, on the basis of such study, it is found that it is a suitable home and that the parent, guardian, or custodian maintaining such home is capable and willing to provide such child with necessary care and supervision, such child shall promptly be returned to such home, **Provided, That,** in accordance with the provisions of Section 66 of this (Act), there shall be offered to such parent, guardian, custodian and child such social services and other assistance as may be necessary; or,

(ii) if, on the basis of such study, it is found that such home is not suitable and that there is no reasonable expectation that the parent, guardian, or custodian of such child is capable or willing to provide such child with necessary care and supervision, proceedings shall be undertaken in accordance with the provisions of Section 60 of this (Act).

Comments on Section 65: *The recommendations contained in this section set forth a new approach to the problem of dealing with the growing problem of runaways outside the juvenile justice system.*

At present, in most states, a runaway child can be adjudicated a delinquent child and one who harbors and provides shelter for such child runs the danger of being charged with and found guilty of contributing to the delinquency of such child. It should be noted that, unless it is otherwise provided by law, the parent or guardian of such child has the legal right to the legal custody of the child, irrespective of the reason which the child may advance for leaving home.

The problem is how shelter care can be provided, at least for a temporary period and outside the juvenile justice system, for a runaway child who requests such care without the knowledge or consent of the child's parent or guardian, without subjecting the person or agency to possible criminal prosecution for contributing to the delinquency of such child.

A further complication of the problem is the frequent reluctance of such runaway children to seek assistance from traditional public agencies either within or without the juvenile justice system and to turn, instead, for such help to private groups or agencies, especially those operated by their peers.

In the operations observed, these problems have not been satisfactorily resolved. Some seem to be totally unaware of the legal pitfalls attendant upon their operations. Others are aware of the legal dangers, but continue their operations, admittedly with great trepidation. Still others seek to give legal sanctity to their operations by having present some official representative of the juvenile justice system - a police or probation officer - on a supposedly "unofficial" basis.

The latter solution raises as many problems as it seeks to solve. Serious question can be raised as to whether a police officer or, under certain circumstances, a probation officer, can legally ignore the continued care being given a runaway, even though such officer is supposedly at the place of operations in an "unofficial" capacity. On the other hand, the mere presence of such officer cloaks the total operation with an aura of officialdom which inhibits the runaway from freely seeking assistance.

The suggestions made in this section seek to overcome these problems in a practical manner while adhering firmly to accepted legal principles.

Under the recommendations contained in this section, the (Department's) designated agency would be enabled to provide emergency shelter care for a limited period of time pursuant to authority vested in it by the (Department) under its regulations. So long as the agency adhered to such regulations in its activities with respect to runaways, it would not be subject to prosecution for contributing to the delinquency of a minor.

However, this section also recognizes the fact that the mere provision of emergency shelter care is not a means of resolving the long term needs of the child. It therefore places certain duties upon the (Department) with respect to seeking to meet those needs outside of the juvenile justice system either through an agreement with the child and the parent or guardian of such child relating to the provision of services on a voluntary basis or through seeking the appointment of a guardian of the person of such child.

Sec. 66. REQUIRED CONSENT FOR PROVISION OF SERVICES - EXCEPTIONS.

Nothing in this (Act) shall be construed as authorizing any employee of the (Department) to provide any services authorized under this (Act) for or with respect to any child except:

(a) Upon the request or with the consent of the parent, guardian, or custodian of such child, or of such child if emancipated, **Provided, That,** where such services are to be provided to a child outside such child's home, such consent shall be in writing signed by such parent, guardian, or custodian, or emancipated child and shall include an undertaking on the part of such parent, guardian, custodian, or emancipated child, to pay such part of the costs of such services as it is determined such parent, guardian, custodian, or emancipated child is financially able to pay;

(b) where such services are provided for or which respect to a child pursuant to an order of the court; our,

(c) where such services are provided pursuant to the provisions of Sections 65, 67, and 68 of this (Act).

Comments on Section 66: *The disclaimer in the first part of this section is to obviate any question that employees of the (Department) are authorized to force the acceptance of services other than in accordance with the provisions of this section.*

It is presumed that where the court orders the provision of services, the court would make the appropriate provision for payment of the cost of providing such services.

Sec. 67. DRUG TREATMENT CENTERS FOR DRUG DEPENDENT CHILDREN.

(a) The (Department) shall establish and administer, or assist in the establishment or administration by means of grants or contracts with public or private non-profit agencies or organizations of authorized drug treatment centers wherever needed throughout the State for the provision of treatment and rehabilitation services to drug dependent children.

(b) For the purposes of this (Act):

(1) a "drug dependent child" means a child who is using a controlled substance, as defined by Section 102 of the Federal Controlled Substance Act, who is in a state of psychic or physical dependence, or both, from the use of such substance on a continuous basis;

(2) "drug dependence" is characterized by behavioral or other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects or to avoid the discomfort caused by its absence;

(3) "treatment and rehabilitation services" means screening, diagnosis, medical, psychological and psychiatric treatment, including emergency care, inpatient, intermediate care, and outpatient services, social services, educational and vocational training and retraining, social services, shelter, maintenance, job training and placement, and other rehabilitation services;

(4) "authorized drug treatment center" means a facility providing treatment and rehabilitation services to drug dependent children in accordance with the provisions of this (Act) and, except where operated directly by the (Department), licensed by the (Title of State Licensing Agency).

(c) An authorized drug treatment center may provide treatment and rehabilitation services to any drug dependent child who voluntarily requests such treatment and services whether or not:

(1) such child requests such treatment and services in connection with an agreement with the court or the Intake Branch of the (Department) pursuant to the (**Family and Juvenile Court Act**);

(2) such child has been placed on probation or under protective supervision by the court pursuant to the (**Family and Juvenile Court Act**); or,

(3) the legal custody of such child has been vested in the (Department) pursuant to the (**Family and Juvenile Court Act**).

(d) Any information divulged by a drug dependent child in requesting treatment and rehabilitation services from an authorized drug treatment center or divulged by such child to or acquired by such center while such services are being provided to such child shall be deemed confidential.

(e) Notwithstanding the provisions of this or any other law, it shall be unlawful for any employee of the (Department) or of any authorized drug treatment center to divulge, directly or indirectly, any information described in Subsection (d) of this Section except with the express, written consent of such child or unless a competent medical authority employed by the (Department) or by such authorized drug treatment center determines that such child is a danger to himself or to others.

(f) A child ( ) years of age or older who is found by a physician employed by the (Department) or an authorized drug treatment center to be a drug dependent child may, notwithstanding the provisions of this or any

other law, give his consent to receiving necessary treatment and rehabilitation services, **Provided, That:**

(1) such consent shall not be subject to disaffirmance because of the minority of such child;

(2) the consent of the parent or guardian of or person standing in loco parentis to such child to the provision of such services shall not be required and need not be sought in order to provide such services to such child; and,

(3) the parent, guardian, or custodian of such child shall not be liable for the payment of the costs of any treatment and rehabilitation services provided to such child.

Comments on Section 67: *The provisions of this section constitute a combination of ideas and suggestions from a variety of sources.*

It should be noted that this is a suggestion to provide for the care and treatment of drug dependent children on a voluntary basis outside the juvenile justice system, as well as for the treatment of such children who are within the jurisdiction of the court.

This section proposes to protect as confidential the information made available to or secured by drug treatment centers and forbid such information to be divulged except with the consent of the child or a physician under certain circumstances.

Subsection (f) seeks to protect physicians giving treatment to children at drug treatment centers, although the Legislature might wish to insert a minimum age of consent to such treatment.

Sec. 68. ASSISTANCE IN THE ESTABLISHMENT AND OPERATION OF YOUTH SERVICE CENTERS.

The provisions of this Section will be part of the forthcoming publication by the Youth Development and Delinquency Prevention Administration of suggested standards for the establishment and operation of Youth Service Bureaus.

Sec. 69. EMPLOYMENT BY (DEPARTMENT) OF PERSONS PREVIOUSLY CONVICTED OF CRIMES OR ON PROBATION, AFTERCARE SUPERVISION, OR PAROLE

Notwithstanding any other provisions of law or of regulations promulgated pursuant thereto, the (Department) is authorized to employ in any appropriate capacity any person otherwise qualified even though such person has previously been convicted of a crime, whether or not pardoned therefor, or is on probation, aftercare supervision, or parole and may direct such person to carry out such duties and functions at such places, and in association with such persons, as the (Department) deems necessary or desirable notwithstanding the terms and conditions of such person's probation, aftercare supervision, or parole.

Comments on Section 69: *In many instances (Departments) are finding that persons who have themselves been "through the mill" can make valuable contributions to the prevention of delinquency and the care and treatment of delinquent children. Yet, because of the existence of restrictive provisions in state laws they are prevented from utilizing the services of such persons as public employees.*

One of the basic tenets of any rehabilitative system should be that the individual should be judged on his merits alone and not on his record and past mistakes. Therefore, if a state seeks to achieve the fair consideration of an individual for employment on his own merits through such devices as making juvenile court records confidential or sealing them, it should, similarly, be in the forefront in itself employing persons whose sole employment disqualification is that they have "records" or are on probation, aftercare supervision, or parole.

Sec. 70. POWER OF (DEPARTMENT) TO ENFORCE AGREEMENTS.

The (Department) may bring an action in the appropriate court in its own name to enforce the terms of any agreement entered into pursuant to the provisions of Section 66 of this (Act).

Comments on Section 70: *Where the functions proposed in these materials are to be vested in an existing State Department, such Department may already possess these powers. On the other hand, in some States, authority to bring legal actions in the name of and on behalf of the State is vested exclusively in the Attorney General. In such States appropriate changes would have to be made in the language suggested.*

Sec. 71. PROMULGATION OF REGULATIONS.

The (Department) is authorized to promulgate and enforce such regulations as may be necessary and appropriate for the proper accomplishment of the duties and functions vested in such (Department) by law and which do not conflict with or exceed the provisions of law vesting such duties and functions in such (Department).

Comments on Section 71: *It should be noted that throughout these materials, certain powers vested in the (Department) are to be exercised in accordance with regulations promulgated by the (Department).*

This section contains suggested language for general authority to be vested in the (Department) to issue such regulations. Where the functions and duties suggested in these materials are to be vested in an existing State Department, that Department may already have sufficient statutory authority to issue regulations governing its activities and this section would not be needed.

Sec. 72. AUTHORITY TO DELEGATE.

All decisions authorized or required to be made by the (Department) pursuant to the provisions of this (Act), unless otherwise specifically limited in this (Act), may, in accordance with regulations promulgated by the (Department), be delegated by the (Title of Executive Head of Department) to any qualified employee of the (Department) or, in appropriate cases, to the official in charge of a licensed residential child caring facility or of a detention or shelter care facility.

Sec. 73. PUNISHMENT FOR UNLAWFUL ACTS.

Whoever is convicted of the commission of an act made unlawful by this (Act), and for which no other punishment is specially prescribed by any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the ( ) for not more than ninety (90) days or by a fine of not more than one hundred (100) dollars, or by both such fine and imprisonment.

Comments on Section 73: *Where State statutes contain a general provision setting forth the extent of punishment for certain criminal acts for which no specific punishment is otherwise provided, this section would not be needed.*

Sec. 74. CONSTRUCTION.

This (Act) shall be liberally construed so as to accomplish the purposes set forth in Section 1.

Comments on Section 74: *It is generally advisable to include a "construction" clause, especially where the legislation also contains a "purpose" clause.*

If the "purpose" clause is clearly, accurately and concisely expressed, a "construction" clause can often be of assistance in securing an interpretation of other provisions of the act which will aid in the attainment of the legislative purposes.

A "construction" clause cannot, however, be used as a substitute for accuracy in legislative drafting.

Thus it cannot be argued that a legislative injunction for liberal construction, even when taken in conjunction with a "broad" purpose clause, would permit a court to interpret a specific provision contrary to its clearly expressed meaning.

Sec. 75. SEPARABILITY.

If any provision of this (Act), or the application thereof to any person, persons, circumstance, or circumstances is held invalid, the remainder of this (Act) and the application of such provision to other persons or circumstances shall not be affected thereby.

Comments on Section 75: *It is generally considered advisable to include a "separability" clause when extensive revisions are made to existing statutory provisions. This is especially important were a wide variety of individuals in varying circumstances would be affected by the provisions enacted.*

However, the inclusion of such a provision cannot serve as an absolute guarantee that the legislation, in its entirety, will not prove to be invalid or inoperable.

Thus, even if such a clause is included, if the application of the enactment to a particular set of circumstances or to a particular group of individuals is declared by the court to be invalid:

(a) the court may, in addition, find that the legislature intended that, if the provisions of the legislation could not apply to all circumstances and individuals, it should apply to none and hence all of its provisions are invalid; or,

(b) the legislature, in enacting the legislation in question, may have intended such a totality of program that the declaration of a portion of it to be void would vitiate the legislative intent as to the type of program envisioned and bring about such an undesirable and distorted result that the immediate enactment of remedial legislation would be clearly indicated.

Sec. 76. EFFECTIVE DATE(S).

This (Act) shall become effective upon its enactment, **Provided, That Sections** _____ **shall not become effective until** (date) **and Provided Further, That . . .**

Alternative:

This (Act) shall become effective upon its enactment, **Provided, That Sections** _____ **shall not become effective until** (date) **and Provided Further, That Sections** _____ **shall not become effective until (the happening of a specific event), and Provided Further, That . . .**

Comments on Section 76: *In many States, the Constitution or laws, or both, govern the effective dates of statutory enactments and specify the forms and, in some cases, the findings which must be made so that legislation can become effective upon enactment. Such requirements must, of course, be followed precisely.*

Careful consideration should be given as to whether certain sections of the proposed legislation should not become effective until a date or dates later than the effective date of the remainder of the legislation.

Thus, such postponement of certain sections may be desirable or necessary when the legislation contains provisions for the transfer of functions from one agency to another. In such case, a delay in the effective date of certain provisions may be necessary so as to permit the orderly transfer of functions and personnel. Similarly, a delay may be in order where regulations must be promulgated and certain administrative actions taken in order to make operable newly enacted requirements, i.e. approval of certain facilities.

In the case of the transfer of functions from one agency to another, unless such transfer is governed by existing statutes of general applicability, there will be need for the inclusion of specific provisions regarding the transfer of personnel from one agency to another, the rights, privileges, and status of such transferred personnel, etc. Similarly in such cases, specific provisions may also be needed with respect to the transfer of appropriated funds, real and personal property, etc.

Except where the proposed legislation deals with matters which are entirely new, there will be need for the inclusion in the proposed legislation of specific provisions dealing with transitional matters and transferred functions, i.e. the effectiveness of existing rules and regulations, pending civil and criminal litigation, continued validity of previously issued licenses, effects of the legislation upon previously issued judicial orders and decrees and upon existing agency orders (i.e. aftercare supervision), obligation and authority for the enforcement of certain requirements during the interim period, "grandfather rights" of licensees, etc.

It is because of the many interim topics which should be considered and covered in the proposed legislation that the alternative is suggested above that certain sections not become operative until the happening of certain events.

The provisions of this section should be carefully coordinated with the second sentence of the suggested language for Section 77 dealing with "Repeal".

Sec. 77. REPEAL.

Chapters____and____of the laws of_____are hereby repealed. Effective_____days after the effective date of this (Act), Chapter____of the laws of_____shall be considered repealed.

Comments on Section 77: *It is important to specify the laws or parts of laws which are to be repealed and when such repeal is to be effective.*

As a general drafting device, it is **not** *recommended that the "repeal" clause consist merely of the statement that "all laws or parts of laws in conflict herewith are hereby repealed". This recommendation is made for two reasons:*

(a) Unless the specific laws or parts of laws to be repealed are specified, the inclusion merely of such a flat statement is tantamount to leaving to the courts the determination as to which existing laws are in conflict with the newly enacted provisions. Even disregarding the fact that such a determination should be made by the legislative rather than the judicial branch of the government, such an unqualified statement is certain to lead to confusion in the administration of the newly enacted legislation. Until each possible interpretation of such legislation has been finally resolved by the courts - a process which could take years - there will remain doubt and confusion as to whether certain provisions of existing laws have been repealed or whether they should be construed in conjunction with the newly enacted legislation, possibly bringing about a result not intended by the legislature;

(b) Where the "repeal" clause requires specificity, it will also require an examination of existing statutes to determine which should be repealed and - more important - which should be amended in the light of the newly enacted legislation. The legislature will therefore have before it the full picture not only of what it is enacting but also specifically of what it is repealing.

TITLE B - A PARTLY STATE AND PARTLY LOCALLY ADMINISTERED PROGRAM

NOTE: To avoid duplication, the texts of the suggested legislative language, and the notes and comments thereto, have not been repeated from Title A, which related to a wholly state administered program, although the prefix "B" is used on the section numbers in this Title for easy reference.

THE SECTIONS SET FORTH BELOW BEAR NUMBERS IDENTICAL, EXCEPT FOR THE LETTERED PREFIX, AND, IN CERTAIN INSTANCES, A LETTERED SUFFIX, TO THOSE OF TITLE A, TOGETHER WITH NOTATIONS AS TO WHETHER IT IS SUGGESTED THAT, FOR A PARTLY LOCALLY ADMINISTERED PROGRAM, THEY REMAIN THE SAME, BE DELETED, BE CHANGED IN THE MANNER INDICATED, OR NEW SECTIONS BE ADDED.

UNLESS OTHERWISE NOTED THE NOTES AND COMMENTS MADE WITH RESPECT TO THE SECTIONS OF TITLE A ARE ALSO APPLICABLE TO THE SECTIONS OF THIS TITLE.

Sec. B-1. Purpose.

No change suggested.

Sec. B-2. Definitions.

Add after Subsection (b) the following:

"( ) (County Department) means the . . ."

Comments: *The words "County Department" are parenthesized to indicate that, in some States, other terms are used to denote similar units of local government, e.g. parish. Also, in some instances other appropriate words would be needed to describe a large governmental unit, such as an urban area, independent of the county and for which a separate department might be established, or an area consisting of two or more counties that have combined their resources to provide services through a single department.*

Add after Subsection (w) the following definition:

"( ) "(Title of Executive Head of County Department)" means the County . . ."

Comments: *As in Subsection (w), this section will vary, as appropriate, from State to State.*

Otherwise, no change suggested in this Section.

Sec. B-3. General Duties of (Department) - Program Development With Respect to Delinquency Prevention and Treatment.

No change suggested, but add the following new section:

Sec. B-3a. GENERAL DUTIES OF (COUNTY DEPARTMENT) - PROGRAM DEVELOPMENT WITH RESPECT TO DELINQUENCY PREVENTION AND TREATMENT.

With respect to programs for the prevention and treatment of juvenile delinquency, each (County Department) shall:

(a) Collect and evaluate statistics, information, and data relating to:

(1) the nature, extent, and causes of, and conditions contributing to, the delinquency of children;

(2) the existence and effectiveness of all such programs and the need for strengthening them or initiating new programs for such purposes;

(b) Adopt and implement the most effective means of making available to the public and to appropriate public and voluntary agencies and organizations throughout the (County) the information thus collected and evaluated;

(c) Encourage and assist in the development and conduct of innovative programs for the diversion of children from the juvenile justice system, to the extent that such diversion can be safely accomplished with due regard to the safety of the community and the well-being of the children involved, and for the provision to them of the care and services they need outside such system, to prevent children from becoming a part of or returning to such system;

(d) Enlist the participation of citizens organizations, individual citizens, and representatives of local private and public agencies in the planning and development equally throughout the (County) of efficient, effective programs;

(e) Cooperate with and assist, within the scope of its functions and duties as provided by law, other public and voluntary agencies and organizations in the development and coordination of such programs;

(f) Promote and assist, to the maximum extent possible, in the development, expansion and operation of such programs as are community based.

Sec. B-4. Duties of (Department) With Respect to Systems Modifications.

No change suggested, but add the following new section:

Sec. B-4a. DUTIES OF (COUNTY DEPARTMENT) WITH RESPECT TO SYSTEMS MODIFICATIONS.

The (County Department) shall provide leadership to, cooperation with, and to the extent authorized by this

(Act), assistance for local public agencies and private voluntary agencies and organizations in bringing about such changes in current systems of providing services to children as are needed to eliminate or modify those aspects of such systems as contribute, or may contribute, to the delinquency of children.

Sec. B-5. Duties of (Department) With Respect to Research.

No change suggested.

Sec. B-6. Duties of (Department) With Respect to Personnel Training Programs.

No change suggested, but add the following new section:

Sec. B-6a. LEAVE FOR (COUNTY) PERSONNEL FOR TRAINING.

With respect to any employee of the (County Department) selected to undergo training pursuant to the provisions of Section B-6 of this (Act), the (County Department) may grant such employee leave to undertake such training and the continuation of the salary and other benefits of such employee.

Sec. B-7. Cooperation by Other State Departments and Agencies.

No change suggested.

Sec. B-8. Duties of (Department) With Respect to Functions of the (State Law Enforcement Planning Agency).

No change suggested.

Sec. B-9. Reports by (Department).

No change suggested.

Sec. B-10. Referrals from Federal Government.

No change suggested.

Sec. B-11. Receipt of Federal Funds.

No change suggested.

Sec. B-12. Establishment of (Office of Delinquency Prevention and Services).

Change to read:

Sec. B-12. ESTABLISHMENT OF (OFFICE OF DELINQUENCY PREVENTION SERVICES).

There is hereby established in the (Department) an (Office of Delinquency Prevention and Services) which shall be under the supervisory control of a (Title) who shall be appointed by the (Title of Executive Head of (Department)) in the same manner and who shall receive the same compensation as the (Titles) of other (Offices) of the said (Department). The (Office of Delinquency Prevention and Services) shall consist of at least a (Division of Delinquency Prevention) and a (Division of Delinquency Services) and such other Divisions and organizational units as may from time to time be established. All employees of the (Office of Delinquency Prevention and Services) shall be selected, appointed, promoted, and compensated in accordance with the provisions of the (State Merit System). The (Office of Delinquency Prevention and Services) shall be responsible for carrying out, or supervising the carrying out of all the functions, duties and responsibilities vested in the (Department) by this (Act).

Add the following new section:

Sec. B-12a. ESTABLISHMENT OF (COUNTY OFFICE OF DELINQUENCY PREVENTION SERVICES).

There is hereby established in the (County Department) a (County Office of Delinquency Prevention and Services) which shall be under the supervisory control of a (Title) who shall be appointed by the (Title of Executive Head of County Department) in the same manner and who shall receive the same compensation as the (Titles) of other (Offices) of the said (County Department). The (County Office of Delinquency Prevention and Services) shall consist of at least a (Division of Delinquency Prevention) and a (Division of Delinquency Services) and such other Divisions and organizational units as may from time to time be established. All employees of the (County Office of Delinquency Prevention and Services) shall be selected, appointed, promoted, and compensated in accordance with the provisions of the (County Merit System). The (County Office of Delinquency Prevention and Services) shall carry out, with respect to such (County), all functions, duties and responsibilities vested in it by this (Act), by the (Family and Juvenile Court Act), or as may be delegated to it by the (Department).

Sec. B-13. Establishment of (Division of Delinquency Prevention).

Change to read:

Sec. B-13. ESTABLISHMENT OF (DIVISION OF DELINQUENCY PREVENTION).

There is hereby established in the (Office of Delinquency Prevention and Services) a (Division of Delinquency Prevention) which shall be under the direction of a (Director of Delinquency Prevention) and which shall be responsible for carrying out, or supervising the carrying out of, all the functions, duties, and responsibilities vested in the (Department) by this (Act) with respect to the prevention of delinquency.

Add the following new section:

Sec. B-13a. ESTABLISHMENT OF (COUNTY DIVISION OF DELINQUENCY PREVENTION).

There is hereby established in the (County Office of Delinquency Prevention and Services) a (Division of Delinquency Prevention) which shall be under the direction of a (County Director of Delinquency Prevention) and which shall be responsible for carrying out all of the functions, duties, and responsibilities vested in or delegated to the (County Department) with respect to the prevention of delinquency.

Sec. B-14. Establishment of (Division of Delinquency Services).

Change to read:

Sec. B-14. ESTABLISHMENT OF (DIVISION OF DELINQUENCY SERVICES).

There is hereby established in the (Office of Delinquency Prevention and Services) a (Division of Delinquency Services) which shall be under the direction of a (Director of Delinquency Services) and which shall be responsible for carrying out, or supervising the carrying out of, all functions, duties and responsibilities vested in the (Department) with respect to the provision of care and treatment for children and youth who are alleged to be or who are found to be delinquent or in need of supervision.

Add the following new section:

Sec. B-14a. ESTABLISHMENT OF (COUNTY DIVISION OF DELINQUENCY SERVICES).

There is hereby established in the (County Office of Delinquency Prevention and Services) a (Division of Delinquency Services) which shall be under the direction of a (County Director of Delinquency Services) and which shall be responsible for carrying out all the functions, duties, and responsibilities vested in or delegated to the (County Department) with respect to the provision of care and treatment for children and youth who are alleged to be or who are found to be delinquent or in need of supervision.

Sec. B-15. Probation Service - Director of Probation - Probation Officers - Intake Branch.

Change to read:

Sec. B-15. (COUNTY) PROBATION SERVICE - (COUNTY) DIRECTOR OF PROBATION - PROBATION OFFICERS - INTAKE BRANCH.

(a) There is hereby established in the (County) (Division of Delinquency Services), under the direction and control of the (County Director of Delinquency Services) an organizational unit to be known as the (County) Probation Service which shall be in charge of a (County) Director of Probation and which shall consist of Probation Officers, other social service personnel, and such other employees as may be necessary to carry out the functions, duties and responsibilities vested in or delegated to the (County Department) with respect to the provision of probation and other casework and clinical services for children referred to and under the jurisdiction of the court in accordance with the provisions of this (Act) and the (Family and Juvenile Court Act) and whose legal custody is not vested in the (County Department).

(b) There is hereby established within the (County Probation Service) an (Intake Branch) for the performance of those functions specified in this (Act) to be performed by such (Intake Branch) and such other functions and duties as may from time to time be delegated to such (Intake Branch).

Add the following new section:

Sec. B-15a. STANDARDS GOVERNING FUNCTIONS, DUTIES AND RESPONSIBILITIES OF (COUNTY OFFICE OF DELINQUENCY PREVENTION AND SERVICES).

All functions, duties, and responsibilities, vested in or required to be performed by the (County Office of Delinquency Prevention and Services) shall be carried out in accordance with standards promulgated by regulations issued by the (Department).

Sec. B-16. Intake Branch of Division of Probation - Functions, Powers and Duties.

No change suggested.

Sec. B-17. General Duties of Probation Officers - Supervision.

No change suggested.

Sec. B-18. Limitations on Police Powers of Probation Officers.

No change suggested.

Sec. B-19. Predisposition Study of Child.

Change "Department" to "(County Department)".

Sec. B-20. Transmitting Copies of Predisposition Study Reports and Recommendations.

Change "(Department)" to "(County Department)".

Sec. B-21. Actions With Respect to Children Violating Terms of Probation.

Change "(Department)" to "(County Department)".

Sec. B-22. Termination of (Department's) Right to Supervise Child on Probation or Aftercare Supervision.

Change "(Department)" to "(County Department)".

Sec. B-23. Development of Statewide System of Approved Detention and Shelter Care Facilities.

No change suggested.

Sec. B-24. Provision of Detention or Shelter Care for Children.

Change "(Department)" to "(County Department)".

Sec. B-25. Notice that Detention or Shelter Care is being Provided to a Child.

Change "(Department)" to "(County Department)".

Sec. B-26. Standards for Detention and Shelter Care Facilities - Approval.

No change suggested.

Sec. B-27. Financial Assistance for Local Detention and Shelter Care Facilities.

No change suggested.

Sec. B-28. Regional Detention Facilities.

No change suggested.

Sec. B-29. Construction and Operation of Detention and Shelter Care Facilities by (Department) - Annual Evaluations of Operations.

No change suggested.

Sec. B-30. Inspections of and Reports from Approved Detention and Shelter Care Facilities.

No change suggested.

Sec. B-31. Suspension or Revocation of Approval of Detention or Shelter Care Facilities.

No change suggested.

Sec. B-32. Appeals from Decisions by (Department) Refusing to Approve or Suspending or Revoking Approval of Detention or Shelter Care Facility.

No change suggested.

Sec. B-33. Limitations on Provision by (Department) of Detention or Shelter Care.

Change "(Department)" to "(County Department)".

Sec. B-34. Prohibitions With Respect to Provision of Detention or Shelter Care.

No change suggested.

Sec. B-35. Detention of Children in Jail - When and Where Prohibited.

No change suggested.

Sec. B-36. Development of Statewide System of Residential Child Caring Facilities.

No change suggested.

Sec. B-37. Inspections of and Reports from Residential Child Caring Facilities.

No change suggested.

Sec. B-38. Financial Assistance for Residential Child Caring Facilities.

No change suggested.

Sec. B-39. Construction and Operation of Residential Child Caring Facilities by (Department) - Annual Evaluations of Operations.

No change suggested.

Sec. B-40. Limitations on Provision by (Department) of Care and Treatment in Residential Child Caring Facilities.

No change suggested.

Sec. B-41. Diagnosis of Child after Commitment to (Department).

No change suggested.

Sec. B-42. Periodic Reexaminations of Cases of Children Committed to (Department).

No change suggested.

Sec. B-43. Visitations of Child Placed in Residential Child Caring Facility.

No change suggested.

Sec. B-44. Determination of Treatment for Child whose Legal Custody is Vested in (Department).

No change suggested.

Sec. B-45. Limitation on Authority to Delegate Major Treatment Determinations.

No change suggested.

Sec. B-46. Powers of (Department) to authorize Medical, Psychiatric, Surgical, or Dental Care - Limitations.

No change suggested.

Sec. B-47. Petitions for Review - Hearings.

No change suggested.

Sec. B-48. Appeals to Court.

No change suggested.

Sec. B-49. Taking into Custody and Detaining Child for Violations of Terms of Aftercare Supervision.

No change suggested.

Sec. B-50. Taking into Custody and Detaining Child who has Run Away from Residential Child Caring Facility.

No change suggested.

Sec. B-51. Clothing, Money, Transportation to be Furnished upon Release from Residential Child Caring Facility.

No change suggested.

Sec. B-52. Payment of Wages for Work Performed in Residential Child Caring Facility.

No change suggested.

Sec. B-53. Establishment of Work Release Program.

No change suggested.

Sec. B-54. Termination of (Department's) Right to Legal Custody.

No change suggested.

Sec. B-55. Making and Maintenance of Written Records.

No change suggested.

Sec. B-56. Restrictions on Use of Records.

No change suggested.

Sec. B-57. Testimonial Privilege.

No change suggested.

Sec. B-58. Sealing of Records.

No change suggested.

Sec. B-59. Information from other Agencies Concerning Child Committed to or Under the Supervision of (Department).

Change to read:

Sec. B-59. INFORMATION FROM OTHER AGENCIES CONCERNING CHILD COMMITTED TO OR UNDER THE SUPERVISION OF THE (DEPARTMENT) OR THE (COUNTY DEPARTMENT).

The police and school authorities and other public officials and agencies shall, upon the request of the (Department) or the (County Department), promptly make available all pertinent information in their possession with respect to a child whose legal custody is vested in the (Department) or the (County Department) or who is under the supervision of the (County Department) pursuant to this (Act) or the provisions of the (Family and Juvenile Court Act).

Sec. B-60. Guardianship of the Person of a Child - Duties of (Department).

Change "(Department)" to "(Department) or (County Department)".

Change "(Department)" to "(County Department)".

Sec. B-61. Transfer of Facilities to (Department).

No change suggested.

Sec. B-62. Confinement of Child in Penal Institution Prohibited.

No change suggested.

Sec. B-63. Authority of (Department) With Respect to Mentally Ill or Mentally Retarded Child.

No change suggested.

Sec. B-64. Duty of (Department) to Accept Legal Custody of or Exercise Supervision Over Children.

Change to read:

Sec. B-64. DUTY TO ACCEPT LEGAL CUSTODY OF OR EXERCISE SUPERVISION OVER CHILDREN.

(a) The (Department) or the (County Department) shall accept legal custody of all children vested in it by the court pursuant to the (Family and Juvenile Court Act).

(b) The (Department) or the (County Department) shall exercise supervision, pursuant to this (Act) over all children placed on probation or determined to be in need of supervision by the court pursuant to the (Family and Juvenile Court Act).

Sec. B-65. Powers and Duties of (Department) With Respect to Runaways.

No change suggested.

Sec. B-66. Required Consent for Provision of Services - Exceptions.

No change suggested.

Sec. B-67. Drug Treatment Centers for Drug Dependent Children.

No change suggested.

Sec. B-68. Assistance in the Establishment and Operation of Youth Service Bureaus.

No change suggested.

Sec. B-69. Employment by (Department) of Persons Previously Convicted of Crimes or on Probation, Aftercare Supervision, or Parole.

Change "(Department)" to "(Department) or (County Department)".

Add new section:

Sec. B-69a. FINANCIAL ASSISTANCE TO (COUNTIES) - SUBSIDY INCENTIVES.

(See special note at end for possible provisions)

Sec. B-70. Power of (Department) to Enforce Agreements.

Change "(Department)" "(County Department)."

Sec. B-71. Promulgation of Regulations.

No change suggested.

Sec. B-72. Authority to Delegate.

No change suggested.

Sec. B-73. Punishment for Unlawful Acts.

No change suggested.

Sec. B-74. Construction.

No change suggested.

Sec. B-75. Separability.

No change suggested.

Sec. B-76. Effective Date(s).

No change suggested.

Sec. B-77. Repeal.

No change suggested.

SPECIAL NOTE ON Sec. B-69a. FINANCIAL ASSISTANCE TO (COUNTIES) - SUBSIDY INCENTIVES.

The device of using State subsidies to localities as an incentive to increase the number of delinquent children placed on probation or provided care and treatment locally and to decrease the number of delinquent children committed to State operated institutions for delinquents or to improve local services for delinquent or pre-delinquent children is relatively new.

The evolution of the current subsidy incentive systems seems founded on the growing belief on the part of ever-increasing numbers of knowledgeable individuals and agencies that the large State operated institutions for delinquents have failed miserably in their primary objective of rehabilitating the children confined in them.

The very large percentage of recidivists from among those children who have "graduated" from State institutions for delinquents lends increased credence to this belief. For whatever reason - location, size, antiquated and often primitive or outdated facilities and treatment, inefficient and costly methods of operation, overcrowding, underfinancing, lack of suitable rehabilitative programs, inadequate, underpaid and undertrained staff, or whatever reason - there is a growing disenchantment with current practices of commitments to State institutions for delinquents.

The thrust in recent years, therefore, has been to reverse the process somehow, to decrease the number of delinquent children sent to those institutions, and to make some kind of provision for their rehabilitation in their own communities. That thrust has also been given increased impetus by the growing belief that all too many children are being needlessly committed to such institutions because they are State operated and financed and, hence, every time a child is committed to a State institution by a locally administered and financed court the result is looked upon as a potential saving for local finances.

However, the financial incentive on the part of the State to decrease the number of commitments to State institutions is equally great. With the average cost of maintaining a delinquent child in a State institution running from $5000 per year upward - and increasing each year - the obvious financial savings to the State through its initiation of a workable subsidy incentive program designed to increase such commitments seems easily calculable and equally attractive.

The subsidy incentive device as a means of achieving this objective is, however, so relatively new that insufficient time has elapsed to permit in-depth, broadly structured evaluations of operations under them sufficiently objective to support definitive judgements as to whether it is achieving its intended goal, whether the methodology is too narrow or too broad, and whether the legislative language providing for such experiments contains the best possible provisions.

Certain legislative drafting suggestions can however be made.

From a study of many of the statutes establishing State-local subsidy incentive programs in this field and from a review of some of the literature on the subject it seems clear that in drafting legislation on this subject it is essential to steer a careful course between two dangers.

On the one hand, the legislation cannot be so drafted as to give the State Department a blank check to do whatever it desires in the name of incentive subsidies designed to reduce commitments to State institutions and increase local care, treatment, and supervision.

On the other hand, it is necessary to avoid the danger of so encumbering the statute with minute details as to imprison the program in a rigid mold necessitating the enactment of frequent, minor legislative changes or resulting in a program which does not have the flexibility of making minor adjustments, within the program's major objectives, to avoid obvious injustices which would otherwise result from the application of adament statutory directives.

For example, the State of California has been one of States which has exercised national leadership in establishing a subsidy incentive program in this field. California's statutes are here cited not with any sense of disparagement but rather as an example of some of the difficulties encountered in a forward looking attempt at legislative draftsmanship in a very difficult area.

The basic California statute establishing a subsidy incentive program in this field was first enacted in 1965 and set forth these specifics for computing a county's maximum entitlement to a subsidy:

"The maximum amount that may be paid to a county pursuant to this article is determined by obtaining the dollar amount in the table in this subdivision for such county's base rate and its percentage decrease in rate of commitment and multiplying that dollar amount by the 'commitment reduction number.' The 'commitment reduction number' is obtained by subtracting (1)

the product of the most recent annual commitment rate and population of the county for the same year from (2) the product of the base commitment rate and population of the county for the same year employed in (1) . . ."

California Wel. & Inst. Code, Ch. 9, Sec. 1825(d). However, in 1969 it was found necessary to amend this section to modify the formula by adding the provision that the percentage rate was to be "interpolated to the nearest one-tenth of 1 percent."

The original provisions of subsection (b) of that Section provided:

". . . Persons returned to the county and placed on probation . . . shall not be counted as having been committed for purposes of determining commitment rates under this subdivision . . ."

Again, in 1969, it was found necessary to amend this subdivision to read:

". . . Persons committed to the Department of Corrections and subsequently discharged . . . and persons committed to the Department of Corrections or the Department of the Youth Authority for diagnostic study only . . . shall not be counted as having been committed for purposes of determining commitment rates under this subdivision . . ."

While it is admittedly extremely difficult in drafting legislative language for a new program to anticipate in the statute all problems which might be encountered in the administration of such program, some of these "bugs" in minor aspects of the proposed program which are not vital to the attainment of the program's objectives can be avoided by granting the program administrators some reasonable degree of discretion so long as they remain within the permissable limits specifically set forth in the enabling legislation.

Some of the "do's" and "dont's" for drafting legislation establishing a subsidy incentive program designed to decrease commitments of delinquent children to State institutions and to increase the amount and quality of local services for children would be:

(1) The State Department should be given authority to establish, on the basis of broad guidelines precisely defined in the legislation, the subsidy incentive formula for payments to localities based on calculations made by the State Department from easily, objectively defined data, e.g. the number of delinquents committed to State institutions by localities during the past specified number of years or the percentage of the child population by locality in a particular age group according to the latest available data;

(2) Since the regulations promulgated for determining a locality's entitlement are of vital importance to each locality in a State, the statute should specifically provide that, unlike other regulations which the State Department is authorized to promulgate, these particular regulations should be issued only after public hearings at which each locality would be given an opportunity to be heard;

(3) The amount to be paid to each locality should not be immutably fixed by statute at an absolute dollar amount but rather, in order to compensate, for example, for increased costs, the statute should authorize the State Department to establish such amount, changing it from time to time as conditions warrant, on the basis of specifically enumerated criteria and, if deemed warranted, within specified maxima;

For example the California statute specifically sets forth an elaborate table under the heading "Per Capita Subsidy in Relation to Percentage Decrease Base Commitment Rates/100,000 (Adult and Juvenile)" but then contains the following authorization:

". . . The Director of the Youth Authority, with approval of the Director of Finance may annually adjust the dollar amounts in the ensuing table to reflect changes in cost to the state of maintaining persons committed to the custody of the Director of Corrections and the Director of the Youth Authority, and if such adjustments are made, the adjusted amounts shall be employed in making the computation prescribed by this subdivision . . ."

(4) Authority should be given to the State Department to adjust the formula for and payments to localities to avoid unjustly penalizing certain localities or inequitably enriching other localities. For example, where the subsidy incentive is to be used for rewarding localities decreasing commitments to State institutions by enriching their probation services, the State Department should be able to avoid decreasing amounts otherwise payable to a locality which has a commitment rate lower than the norm, while it may already be providing greater than normal skilled probation services;

(5) One of the major problems faced in subsidy incentive programs relates to fiscal year overlaps and the adjustments increasing or decreasing the entitlements of localities to specific subsidy amounts.

For example, in a subsidy incentive program where the amounts of subsidy is geared to decreases in local commitments to State institutions and the subsidies paid are to be used for the enrichment of probation services, new programs established on the basis of a subsidy payment received in a particular year - additional staff hired, training programs undertaken - face cutbacks if, for reasons beyond the control of the locality, subsidies in succeeding fiscal years are decreased. Unless one is willing to say that increases in commitments to State institutions are per se undesirable - in which case serious consideration should be given to the absolute prohibition of such commitments - then provisions should be written into the statute authorizing the State Department to take into consideration the fact that children coming before a local court from year to year are not identical and that the process of enriching probation programs cannot be turned on or off with spigot-like mechanization. Violent fluctuations in program levels from year to year can, in the long run, be more costly to the State than the amount needed to maintain a program

for a limited period of time at a level which does not fall precisely within mathematical computations.

The possibility of cutbacks in subsidy incentive payments to a particular locality because, for example, of an increase in commitments to State institutions, does raise the possibility - probably but not necessarily likely in small localities - that the court may be inhibited from committing a child to a State institution, even where such commitment is warranted, because of the fear of local taxpayer pressures. Whether such danger can be avoided remains to be seen in the light of actual program operations. Some indications that this may be happening have already become apparent in some programs, although from the scant evidence available it is difficult to determine whether or not the occurrence of such pressures is merely a symptom of the newness of these programs;

(6) One of the most difficult areas of delineation in drafting a statute relating to subsidy incentives is with respect to the purposes for which the subsidies granted can be used. Is it intended that the subsidies will be available for paying the costs of probation services provided only to children who would otherwise have been committed to State institutions or should they also be available for probation services for children who might at some future time be in danger of commitment to State institutions? For the initiation of probation services in localities where none exist or only for increasing the quality of existing probation services? For up-grading the quality of existing probation services or only for innovative types of probation services? For care and treatment of children in local foster or group homes or camps or only for probation services? For the initiation of delinquency prevention measures such as Youth Service Bureaus for children not adjudicated delinquents or only for probation services for adjudicated delinquents?

These are but a few of the many questions which must be answered before attempting to draft the provisions of a statute defining the outer limits of the purposes for which subsidy incentives can be used. These questions must be answered regardless of how much authority is given to the State Department to fill in the details by regulations.

It should also be noted that the answers to some of these questions will also influence the criteria chosen for determining the bases for computing subsidy incentives.

Despite the many difficulties in drafting concise and workable legislative language in this field and the great need for increasing at the earliest possible moment objective evaluations of the operations of current programs, a subsidy incentive program, aimed at reducing the number of children committed to State institutions and encouraging and assisting their care, treatment, and supervision in their own communities, offers great promise and it is to be hoped that the difficulties encountered will not serve to deter further experimentation in its use.